

N. 2945

No. 14816

United States  
Court of Appeals  
for the Ninth Circuit

WILLIAM R. LeVECKE and REED LeVECKE,  
Appellants,

vs.

GRIESEDIECK WESTERN BREWERY CO.,  
a corporation, and CARLING BREWING  
CO., a corporation, Appellees.

Transcript of Record

Appeal from the United States District Court for the Southern  
District of California, Central Division

FILED

DEC 27 1955

PAUL P. O'BRIEN, Clerk



No. 14816

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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

THOMAS A. WOOD,  
LARWILL & WOLFE,

1017 Citizens N. Bank Building,  
Los Angeles 13, California.

For Appellees:

SHEPPARD, MULLIN, RICHTER &  
BALTHIS,  
CAMERON W. CECIL,

458 South Spring Street,  
Los Angeles 13, California. [1\*]

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\* Page numbers appearing at foot of page of original Transcript of Record.



In the United States District Court, Southern District of California, Central Division

No. 18034-PH

WILLIAM LeVECKE and REED LeVECKE,  
doing business as The LeVecke Company,  
Plaintiffs,

vs.

GRIESEDIECK WESTERN BREWERY CO., a  
corporation, and CARLING BREWING CO.,  
a corporation, Defendants.

### PETITION FOR REMOVAL

To the Honorable United States District Court,  
Southern District of California, Central Division,  
and to the honorable Judges thereof:

The petition of defendant The Griesedieck Company, sued herein as Griesedieck Western Brewery Co., a corporation, and defendant Carling Brewing Company Incorporated, sued herein as Carling Brewing Co., a corporation, respectfully shows:

#### I.

That the plaintiffs are and at all times herein mentioned have been citizens and residents of the State of California as alleged in paragraph I of the first cause of action of their complaint on file herein. [2]

#### II.

That the defendant The Griesedieck Company, a corporation, is now and at all times herein men-



tioned has been a corporation organized and existing under and by virtue of the laws of the State of Illinois and is now and at all times herein mentioned has been a citizen and resident of the State of Illinois and a non-resident of the State of California as alleged in paragraph II of the first cause of action of the complaint on file herein.

### III.

That the defendant Carling Brewing Company Incorporated, a corporation, is now and at all times herein mentioned has been a corporation organized and existing under and by virtue of the laws of the State of Virginia and is now and at all times herein mentioned has been a citizen and resident of the State of Virginia and a non-resident of the State of California, though it is alleged in paragraph II of the second cause of action of the complaint on file herein that said defendant Carling Brewing Company Incorporated, a corporation, is an Ohio corporation.

### IV.

That the above entitled action is of a civil nature and the value of the matter in controversy therein, exclusive of interest and costs, is in excess of the sum of \$3,000.00 in that by said action the plaintiffs seek to recover judgment against the defendant The Griesedieck Company, a corporation, in the sum of \$1,125,000.00, and further seek to recover judgment against the defendant Carling Brewing Company Incorporated, a corporation, in the sum of \$1,125,000.00. [3]



V.

That the defendants, and each of them, dispute the plaintiffs' claim in its entirety and they, and each of them, will defend said action.

VI.

That the time provided by law within which to present this petition has not expired and that the time within which the defendants, and each of them, are required to answer or otherwise appear in said action has not yet expired.

VII.

That the plaintiffs commenced the above entitled action in the Superior Court of the State of California, in and for the County of Los Angeles, on February 24, 1955, by filing their complaint therein and causing summons to be issued thereon on said date.

VIII.

That on March 10, 1955, the plaintiffs attempted to effect service of summons and complaint in the above entitled action upon the defendant The Griesedieck Company, a corporation, by serving the Secretary of State of the State of California; that a copy of the summons and complaint was received by the defendant, The Griesedieck Company, at its offices in Belleville, Illinois, on March 21, 1955; that said defendant, The Griesedieck Company, has not yet appeared in said action in the Superior Court of the State of California, in and for the County of Los Angeles.

## IX.

That on March 22, 1955, the plaintiffs attempted to effect [4] service of summons and complaint in the above entitled action upon the defendant, Carling Brewing Incorporated, a corporation, by delivering to K. W. Burrie, the regional sales manager of the defendant Carling Brewing Company Incorporated, a copy of the summons and complaint; that said defendant, Carling Brewing Company Incorporated, has not yet appeared in said action in the Superior Court of the State of California, in and for the County of Los Angeles.

## X.

That the defendants file herewith a copy of all processes, pleadings, and orders served upon them, and each of them, in such action, and will promptly, after the filing of this petition and bond herewith, give written notice thereof to the plaintiffs, and each of them, and file a copy of this petition with the Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

## XI.

That the defendants, and each of them, present and file herewith a bond with good and sufficient surety conditioned that the defendants, and each of them, will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

XII.

That attached hereto and made a part of this petition as though herein set forth in full is the affidavit of Robert F. Schlafly, marked Exhibit "A", and the affidavit of Edward D. Jones, marked Exhibit "B". [5]

XIII.

That all non-nominal defendants have joined in this petition for removal.

Wherefore, the defendants, and each of them, pray that this petition and the bond filed herewith be accepted and that the aforesaid cause be removed from the Superior Court of the State of California, in and for the County of Los Angeles, to the United States District Court, Southern District of California, Central Division.

Dated: March 29, 1955.

SHEPPARD, MULLIN, RICHTER  
& BALTHIS,

JAMES C. SHEPPARD,

EDWIN H. FRANZEN,

/s/ CAMERON W. CECIL,

Attorneys for Defendants

[6]

Duly Verified. [7]

## EXHIBIT "A"

## AFFIDAVIT

State of Missouri,  
City of St. Louis—ss.

Robert F. Schlafly, being first duly sworn, on his oath says:

1. I reside at 7120 Washington Avenue, St. Louis County, Missouri. I am Assistant Secretary of Carling Brewing Company Incorporated.

2. Carling Brewing Company Incorporated is now, and has been throughout its corporate existence, a corporation incorporated under the laws of the State of Virginia. Said corporation is not now, and has never been, incorporated under the laws of the State of California.

3. Carling Brewing Company Incorporated has its principal place of business in Cleveland, Ohio. To the best of my information and belief there is no corporation named Carling Brewing Company existing under and by virtue of the laws of the State of Ohio.

/s/ ROBERT F. SCHLAFLY

Subscribed and sworn to before me, a Notary Public in and for the City of St. Louis, Missouri, this 25th day of March, 1955.

[Seal]        /s/ BETTY PROCTOR,  
Notary Public [8]

EXHIBIT "B"

AFFIDAVIT

State of Missouri,  
City of St. Louis—ss.

Edward D. Jones, being first duly sworn, on his oath says:

1. I reside at 6349 Ellenwood Avenue, in St. Louis County, Missouri. I am the President of The Griesedieck Company.

2. The Griesedieck Company is a corporation incorporated under the laws of the State of Illinois; it is the same corporation which was formerly named the Griesedieck Western Brewery Company but said corporation changed its name to The Griesedieck Company on November 1, 1954, by amendment of its Articles of Incorporation.

3. The Griesedieck Company, formerly named Griesedieck Western Brewing Company, is now, and has been throughout its corporate existence, a corporation incorporated under the laws of the State of Illinois and it is not now and has never been incorporated under the laws of the State of California.

/s/ EDWARD D. JONES

Subscribed and sworn to before me, a Notary Public in and for the City of St. Louis, Missouri, this 25th day of March, 1955.

[Seal] /s/ HAMILTON GROSSE,

Notary Public

[9]

[Endorsed]: Filed March 29, 1955.

[Title of District Court and Cause.]

COPY OF ALL PROCESSES, PLEADINGS,  
AND ORDERS SERVED UPON THE  
GRIESEDIECK COMPANY

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 640630

William LeVecke and Reed LeVecke, dba The Le-  
Vecke Company, Plaintiffs, vs. Griesedieck  
Western Brewery Co., a corporation and Car-  
ling Brewing Co., a corporation, Defendants.

SUMMONS

The People of the State of California Send Greet-  
ings: to Griesedieck Western Brewery Co., a  
corporation, and Carling Brewing Co., a cor-  
poration, Defendants.

You are directed to appear in an action brought  
against you by the above named plaintiffs in the  
Superior Court of the State of California, in and  
for the County of Los Angeles, and to answer the  
Complaint therein within ten days after the service  
on you of this Summons, if served within the  
County of Los Angeles, or within thirty days if  
served elsewhere, and you are notified that unless  
you appear and answer as above required, the plain-  
tiffs will take judgment for any money or damages  
demanded in the Complaint, as arising upon con-



tract, or will apply to the Court for any other relief demanded in the Complaint.

Given under my hand and seal of the Superior Court of the County of Los Angeles, State of California, February 24, 1955.

[Seal] HAROLD J. OSTLY,  
County Clerk and Clerk of the Superior Court of  
the State of California, in and for the County  
of Los Angeles.

/s/ By M. W. NELSON, Deputy [11]

[Title of Superior Court and Cause.]

### COMPLAINT

(Damages, Breach of Contract and Fraud)

Come now the plaintiffs and for a cause of action against the defendants allege:

#### I.

That the plaintiffs are individuals who reside in the County of Los Angeles, State of California, and do business under the fictitious firm name of The LeVecke Company with their principal place of business in the County of Los Angeles, State of California, and have filed with the Clerk of the said County, and published [12] therein, a certificate showing their use of said fictitious name as required by Sections 2466 and 2468 of the California Civil Code and have done all things required by said sections.

## II.

That the defendant Griesedieck Western Brewery Co., a corporation, hereinafter called Griesedieck, is a corporation existing under and by virtue of the laws of the State of Illinois, with its principal place of business at Belleville, Illinois; that said defendant, at all times herein referred to, was transacting business in said State of California but failed to file a statement required of a corporation by Section 6403 of the Corporation Code of the State of California; that defendant's agents in the State of California for the purposes of carrying on its business in said state are, and at all times herein referred to were, the plaintiffs.

## III.

That in or about the month of August, 1950, the plaintiffs and the said defendant entered into an oral contract whereby plaintiffs agreed to act exclusively as the agents and representatives of defendant and as the sole distributors of the defendant's products, namely Stag Beer and Hyde Park "75" beer, in the western part of the United States and more particularly in the States of California, Arizona and Nevada, and defendant agreed to supply plaintiffs with said products on order by plaintiffs from time to time at agreed upon wholesale prices; that it was orally agreed by and between said parties that said contract could be terminated by either party only upon the giving by the terminating party to the other party one year's [13] notice of termination; that said contract has been reaffirmed from time to time, both orally and in writing, by both



parties, with the last said affirmation having been made by the defendant in or about the month of September, 1954.

#### IV.

That in furtherance of said contract the plaintiffs have devoted themselves exclusively to acting as the agents and representatives of defendant and to the distribution of defendant's said products to the exclusion of all others and have established and built up retail outlets for said products in the said area of California, Arizona and Nevada; that plaintiffs have been able to establish and build up said retail outlets by their representations to said retail concerns and businesses that they, the plaintiffs, would be able to give said retail outlets and concerns one years' notice prior to the discontinuance of either the Stag or Hyde Park "75" labels or the termination of plaintiffs' employment as defendant's agents, representatives and distributors so that said retail outlets would be able to replace defendant's said beers with other brands and would therefore be able to avoid the loss of customer good will which loss would follow from any immediate discontinuance of defendant's said brands of beer; that defendant from time to time, did, through its officers and representatives other than plaintiffs, confirm to said retail outlets plaintiffs' said representations as to one years notice being given before defendant's said brands of beer would be discontinued or plaintiffs would be replaced as defendant's agents, representatives and distributors [14] in said geographical area; that said retail outlets and dealers agreed to

and did handle and carry defendant's said brands of beer in reliance on plaintiffs' personal reputation and on their representations as set forth hereinabove as confirmed by defendant's officers and other representatives; that the plaintiffs have, at all times done and performed all of the stipulations, conditions and agreements stated in said contract to be performed on their part at the time and in the manner therein specified.

#### V.

That on or about the 28th day of October, 1954, plaintiffs placed an order with the defendant for three (3) freight car loads of the said Stag beer and Hyde Park "75" beer; that on or about the 28th day of October, 1954, defendant did fail and refuse to deliver said merchandise and did then and there further breach said contract by stating to plaintiffs through its agent that defendant no longer desired plaintiffs' services and that defendant would no longer honor plaintiffs' orders for said products and that the relationship between plaintiffs and defendant was terminated as of November 1, 1954; that at no time did defendant ever give plaintiffs one year's notice of termination of said contract as required thereby.

#### VI.

That by reason of the breach of said contract by defendant as aforesaid, plaintiffs have been damaged in the sum of \$750,000.00, no part of which has been paid.

For a Second, Separate and Further cause of Action, Plaintiffs Allege:

I.

Paragraphs I, II, III, IV and V of the first cause of action are incorporated herein and by reference are made a part [15] hereof as fully as though set forth at length.

II.

The defendant Carling Brewing Co., hereinafter called Carling, is a corporation existing under and by virtue of the laws of the State of Ohio with its principal place of business in Cleveland, Ohio. That at all times herein mentioned said defendant was and now is doing business in the State of California, with an office for the transaction of said business in the City of Los Angeles, California, although it has not qualified with the Secretary of the State of California to do business in said State of California.

III.

That in or about the month of September, 1954, the defendant Carling did enter into an agreement whereby it was to purchase all of the assets of the defendant Griesedieck for a consideration of about \$10,000,000.00 to be paid by said defendant Carling to defendant Griesedieck; that defendant Carling did assume all of defendant Griesedieck's rights and obligations under and by virtue of the contract by and between said defendant Griesedieck and plaintiffs; that defendant Carling did, on or about the 27th day of September, 1954, represent to plain-

tiffs that it would continue to honor the contracts of defendant Griesedieck after said defendant Carling assumed and took over the business of defendant Griesedieck; that plaintiffs believed and acted in reliance on said representation by said defendant Carling.

#### IV.

That by reason of the breach of said contract by defendant as aforesaid, plaintiffs have been damaged in the sum of \$750,000.00, no part of which has been paid. [16]

For a Third, Separate and Further Cause of Action, Plaintiffs Allege:

#### I.

Paragraphs I, II, III, IV and V of the first cause of action and paragraphs II and III of the second cause of action are incorporated herein and by reference are made a part hereof as fully as though set forth at length.

#### II.

That in the month of August, 1954, at Los Angeles, California, the defendant Griesedieck falsely and fraudulently and with intent to deceive and defraud the plaintiffs, represented to plaintiffs that defendant Carling would continue to produce and distribute and market beer under the brand labels of Stag beer and Hyde Park "75" beer and that defendant Carling would not alter or change the existing contractual arrangements between defendant Griesedieck and its agents, representatives and distributors, including plaintiffs, and that defendant

Carling would in fact honor said agreements and would continue to do business with persons having said contractual arrangements with defendant Griesedieck in the same manner and under the same circumstances as defendant Griesedieck had done prior to the time of said representation.

### III.

That on the 5th day of September, 1954, defendant Carling falsely and fraudulently and with intent to deceive and defraud the plaintiffs represented to plaintiffs that it would continue to produce and distribute and market beer under the brand labels of Stag and Hyde Park "75" beer and that defendant Carling would not alter or change the existing contractual arrangements between defendant Griesedieck and these plaintiffs, and that defendant Carling would honor said agreements and would continue to do business with them [17] under the contractual arrangements that plaintiffs had with defendant Griesedieck, and in the same manner and under the same circumstances as defendant Griesedieck had done prior to that time.

### IV.

That said representations by defendants Carling and Griesedieck were false and were then and there known by defendant Griesedieck and defendant Carling to be false; that in truth and in fact defendants Griesedieck and Carling then and there knew that defendant Carling intended to discontinue distributing and selling said Stag Beer and Hyde Park



“75” beer in the western United States area in which plaintiffs represented defendant Griesedieck and did then and there intend to dispense with plaintiffs’ services in all respects.

#### V.

That plaintiffs believed and relied upon said representations and were thereby induced to hold themselves out as the agents of the defendant Carling as well as defendant Griesedieck and to continue to devote themselves exclusively to selling and supplying said Stag beer and Hyde Park “75” beer to retailers in said geographical area.

#### VI.

That by reason of the premises plaintiffs have been damaged in the sum of \$750,000.00.

For a Fourth, Separate and Further Cause of Action, Plaintiffs Allege:

#### I.

Paragraphs III, IV and V of the first cause of action and paragraphs II and III of the second cause of action are incorporated herein and by reference are made a part hereof as fully as though set [18] forth at length.

#### II.

That in or about the month of August, 1950, plaintiffs entered into a contract with the Griesedieck Western Brewery Co. whereby plaintiffs agreed to devote themselves exclusively to acting as said company’s agents, representatives and distribu-

tors of said company's products, namely Stag beer and Hyde Park "75" beer in the area of the Western United States and more particularly in the States of California, Arizona and Nevada, and said company agreed to supply plaintiffs with Stag beer and Hyde Park "75" beer as ordered by plaintiffs at agreed upon wholesale prices and did agree to act through plaintiffs as its sole agents, representatives and distributors in said area; that said contract could be terminated only by one of the parties giving the other party one year's notice of termination.

### III.

That defendant Carling did unlawfully interfere with said contract by persuading, influencing, forcing and inducing said Griesedieck to terminate said contract without giving plaintiffs the agreed one year's notice of termination; that as a result of said persuasion, influence, force and inducement by said defendant Carling, the said defendant Griesedieck did, on or about October 28, 1954, fail and refuse to honor plaintiffs' orders for said company's products, namely, Stag beer and Hyde Park "75" beer, and did fail and refuse to give plaintiffs any notice of termination of said contract; that said Griesedieck did thereby fail and refuse to perform its obligations under said contract with plaintiffs as a direct result of the interference by defendant Carling.

### IV.

That defendant Carling, although having no interest or [19] right whatsoever in said contract, did

take it upon itself to notify plaintiffs on the 28th day of October, 1954, that said contract was terminated as of October 31, 1954, and would not be further honored by said company.

#### V.

That as a result of said unlawful interference by defendant Carling with plaintiff's contractual rights with said company, plaintiff was damaged in the sum of \$750,000.00.

#### VI.

That defendant Carling unlawfully interfered with said contractual rights of plaintiffs with said defendant Griesedieck for the sole and exclusive purpose of obtaining for itself the right to sell its product, namely, Carling Black Label Beer, in the area in which plaintiffs represented said company without competition from plaintiffs or Stag or Hyde Park "75" beers.

#### VII.

That because of the unwarranted and unlawful interference by defendant Carling with plaintiffs' contractual rights with said Griesedieck and plaintiffs' damage resulting therefrom, plaintiffs should be awarded punitive damages against defendant Carling in the amount of \$375,000.00.

Wherefore, plaintiffs pray judgment against defendants and each of them as follows:

1. For damages for breach of contract and fraud in the amount of \$750,000.00;
2. For punitive damages in the sum of \$375,-



000.00 because of defendant Carling Company's interference with plaintiffs' contractual rights with defendant Griesedieck Western Brewery Co.;

3. For costs of suit herein incurred; and

4. For such other and further relief as to this court [20] may seem just and proper.

THOMAS A. WOOD,  
LARWILL AND WOLFE,

/s/ By CHARLES W. WOLFE,  
Attorneys for Plaintiffs [21]

Office of the Secretary of State,  
State of California, Sacramento 3

March seventeenth, 1955

Griesedieck Western Brewery Co.  
1201 West E Street  
Belleville, Illinois

Re: William LeVecke, et al., vs. Griesedieck  
Western Brewery Co., et al.; Superior  
Court, Los Angeles County; No. 640630

Gentlemen:

The enclosed copies of process in the above action were delivered to the undersigned March 10th for the purpose of serving your corporation.

Section 6503, Corporations Code, provides that a corporation served in this manner must appear and answer within thirty days after the delivery of the

copies to the Secretary of State or an Assistant or Deputy.

Yours very truly,

Frank M. Jordan,  
Secretary of State

By .....  
Deputy Secretary of State

e enc reg air rrr [22]

[Title of Superior Court and Cause.]

ORDER FOR SERVICE OF DEFENDANT  
GRIESEDIECK WESTERN BREWERY  
CO. BY SERVING SECRETARY OF  
STATE OF CALIFORNIA

Upon reading the affidavit of William LeVecke, one of the plaintiffs in the above entitled action, and it satisfactorily appearing therefrom that the defendant Griesedieck Western Brewery Co. cannot, after due diligence, be found within the State of California, and it further appearing that the said defendant has not designated an agent for service of process in the State of California and has no officer or agent in the State of California upon whom service of process can be made, and it further appearing that a summons has been duly issued out of the above entitled court in this action and that service cannot be made upon said defendant corporation in this State for the reasons hereinabove stated and by said affidavit made to appear, and the address of the defendant [23] Griesedieck Western

Brewery Co. appearing to be 1201 West "E" Street, Belleville, Illinois, and on motion of the plaintiffs,

It Is Hereby Ordered that service of summons and complaint in the above entitled action shall be made upon said defendant Griesedieck Western Brewery Co. by personal delivery of the summons and complaint in the above entitled action, together with a copy of this Order, to the Secretary of State or to an assistant or deputy Secretary of State of California.

Dated this 1st day of March, 1955.

/s/ RICHARDS,

Judge of the Superior Court [24]

[Endorsed]: Filed March 29, 1955.

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[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION TO SET  
ASIDE, VACATE, AND QUASH SERVICE  
OF SUMMONS AND COMPLAINT AND  
NOTICE OF MOTION AND MOTION TO  
DISMISS

To the Plaintiffs Above Named and to Messrs. Larwill & Wolfe, and Thomas A. Wood, Esquire, 1017 Citizens National Bank Building, Los Angeles 13, California, their attorneys, and To Whomsoever It May Concern:

You and Each of You Will Please Take Notice that the defendant The Griesedieck Company, a cor-

poration, appearing specially and solely for the purpose of making these motions, notice of which is given herewith, will, on Monday, April 18, 1955, at the hour of 10:00 o'clock a.m., of said day, or as soon thereafter as counsel may be heard, in the court room of the Honorable Peirson M. Hall, [25] Judge of the above named Court, in the United States Post Office and Court House Building, Los Angeles 12, California, move the above named Court as follows:

1. To dismiss the action, and each cause of action thereof or in lieu thereof to quash the summons and the return of service of summons attempted to be effected upon The Griesedieck Company by serving the Secretary of State of the State of California for the reason that this Court has no jurisdiction over the person of this defendant.

2. To dismiss the action, and each cause of action thereof or in lieu thereof to quash the summons and the return of service of summons attempted to be effected upon The Griesedieck Company by serving the Secretary of State of the State of California for the reason that such attempted service of process was and is insufficient.

3. To dismiss the action, and each cause of action thereof or in lieu thereof to quash the summons and the return of service of summons attempted to be effected upon The Griesedieck Company by serving the Secretary of State of the State of California for the reason that such attempted service of process was and is in violation of due process.

Said motion will be based upon (a) the summons;

(b) the complaint of the plaintiffs on file herein; (c) the return of service of summons, if such return shall have been made by the plaintiffs at the time of the hearing on this motion; (d) the order for service of defendant Griesedieck Western Brewery Co. by serving Secretary of State of California; (e) the memorandum of points and authorities served and filed herewith; (f) the affidavits of Edward D. Jones, Henry G. Sewing, Jr., Melvin B. Feig, and August L. Griesedieck, hereto affixed as Exhibits "1," "2," "3," and "4," respectively; [26] (g) this notice of motion; and (h) all other papers, files, and records on file in the above entitled action at the time said motion is heard.

Dated: April 4, 1955.

SHEPPARD, MULLIN, RICHTER  
& BALTHIS,  
JAMES C. SHEPPARD,  
EDWIN H. FRANZEN,  
/s/ CAMERON W. CECIL,  
Attorneys for Defendants [27]

EXHIBIT No. 1

AFFIDAVIT IN SUPPORT OF MOTION BY  
DEFENDANT THE GRIESEDIECK COM-  
PANY

State of Missouri,  
City of St. Louis—ss.

Edward D. Jones, being first duly sworn, on his oath says:

1. I reside at 6341 Ellenwood Avenue, St. Louis



County, Missouri. I am President of The Griesedieck Company, formerly Griesedieck Western Brewery Company, and I have been the Chief Executive Officer of said corporation from 1944 to date and at all times referred to in the complaint. During said period I held the offices of President and Chairman of the Board of said corporation. I have personal knowledge of the facts stated herein.

2. The Griesedieck Company is a corporation organized and existing under the laws of the State of Illinois and is licensed to do business as a foreign corporation in the State of Missouri. It is not now and never has been qualified under the laws of the State of California to do business within said State. Prior to November 1, 1954, and at all times referred to in the complaint, the corporation, under the name of Griesedieck Western Brewery Company, was engaged in manufacturing and selling beer from its brewery and offices in Belleville, Illinois, and from its brewery and offices in the City of St. Louis, Missouri. On November 1, 1954, this defendant sold and transferred to Carling Brewing Company Incorporated, for cash, all of its brewing assets, equipment, real estate, plants and inventory. It has not engaged in the brewing business at any time thereafter.

3. This defendant has never done business within the State of California. It has never held a license to sell, [28] import or otherwise engage in the beer business within said state. The only business it has ever done with respect to purchasers located in the State of California was done prior to November 1,

1954, and in the course of interstate commerce with two purchasers. That business consisted of the receipt and acceptance in Belleville, Illinois, or in St. Louis, Missouri of orders from the plaintiffs and from Drexel Distributing Company, both located in California, and the filling of said orders by the shipment of its products by railroad common carrier from its plant in Illinois or from its plant in Missouri to said purchasers residing in California. All such shipments originated at either of the company's two plants outside California and such sales were made and billed f.o.b. this defendant's plants. On all sales made by this defendant to the two purchasers in California the title to the merchandise passed to the purchaser at the time of delivery by this defendant to the railroad carrier in Illinois or in Missouri. All invoices and statements relating to such sales were mailed from this company's offices in Illinois or in Missouri direct to the purchasers.

4. At all times referred to in the complaint, the plaintiffs owned and operated their own wholesale beer business within the State of California. The plaintiffs, as a wholesaler and independent distributor of this defendant's products in California, sold beer to such wholesale and retail outlets as they chose to obtain. The plaintiffs purchased beer from this defendant as principals on their own account and were billed for all such purchases at time of shipment, paying the wholesale price therefor. The plaintiffs were responsible for, and paid to the carrier, all transportation charges from point [29] of origin to destination of the shipment. The plaintiffs

resold on their own account the beer which they had purchased from this defendant; they had sole responsibility for fixing prices on sales by them and for the billing and collection of their accounts, without any control or supervision by this company. This company did not require the plaintiffs to maintain any records for it, to collect any data, or to file any reports with it with respect to the plaintiff's operation of their said business or with respect to their disposition of the beer sold by this defendant to them.

5. Upon the sale and conveyance of all its operating assets on November 1, 1954, this company in fact went out of the brewing business. Its entire brewing business ceased on October 31, 1954, including the business in interstate commerce which this company had done prior to November 1, 1954, with the two purchasers residing in California. This company has not sold or shipped any beer to purchasers in California or elsewhere, or done any other act relating thereto, from November 1, 1954, to date.

6. Neither of the plaintiffs was ever an officer or employee of this company. Neither plaintiff ever received a salary, an expense account or other personal compensation from this defendant. The plaintiffs were paid an independent distributor's commission on the sales made in interstate commerce by this defendant to Drexel Distributing Company in California, which purchaser had been obtained by the plaintiffs. The commission arrangement with respect to sales to Drexel Distributing Company,



which was the only other customer of this company in California, was made at plaintiffs' request.

7. This defendant has never done any of the following acts: [30]

(a) Maintained an office or place of business in the State of California;

(b) Owned or leased any real estate in the State of California;

(c) Owned, leased or operated any personal property in the State of California;

(d) Maintained or leased a warehouse in the State of California;

(e) Maintained an inventory or stock of goods in the State of California;

(f) Had any salesmen or other employees working within the State of California or soliciting orders in said State;

(g) Advertised by newspaper, radio, television, billboards or in any other manner within the State of California; any advertising within California of this defendant's products was done by the plaintiffs;

(h) Authorized the listing of its corporate name in any telephone or other directory published within the State of California;

(i) Been assessed any taxes by the State of California or paid any to said State;

(j) Applied for or received any licenses or permits from the State of California for the purpose of manufacturing, selling, importing or otherwise engaging in its business within said State;

(k) Listed a California office or agent on its stationery;

(l) No officer or employee of this company ever resided in California during such employment;

(m) Shipped to the plaintiffs or to anyone else in California on a consignment basis; [31]

(n) Shipped its products to California in equipment owned or leased by it;

(o) Made local deliveries within California of its products;

(p) Maintained a bank account in the State of California;

(q) Made collections or received any payments for its merchandise within the State of California;

(r) Made any purchases within California of goods or supplies;

(s) Lent any money to the plaintiffs or to any of their customers within the State of California;

(t) Entered into any contracts or solicited any orders within the State of California.

/s/ EDWARD D. JONES

Subscribed and sworn to before me, a Notary Public in and for the City of St. Louis, Missouri, this 30th day of March, 1955.

[Seal] /s/ BETTY PROCTOR,  
Notary Public [33]

EXHIBIT No. 2

AFFIDAVIT IN SUPPORT OF MOTION BY  
DEFENDANT THE GRIESEDIECK COM-  
PANY

State of Missouri,  
City of St. Louis—ss.

Henry G. Sewing, Jr., being first duly sworn, on his oath says:

1. I reside at 2970 Ridgeview Drive, St. Louis County, Missouri. I was the Merchandising Manager of the Griesedieck Western Brewery Company (now named The Griesedieck Company) from February, 1952, to November 1, 1954: I was the Sales Manager of the Hyde Park Division of Griesedieck Western Brewery Company from July 1, 1950, to February, 1952. I had supervision of all sales made by this company to the plaintiffs and to Drexel Distributing Company at all times referred to in the complaint. I have personal knowledge of the facts stated herein.

2. The company has never maintained a sales office in California. It has never had a salesman working within California or soliciting orders in said state. The company has never advertised its products within the State of California. From time to time, the company sold or furnished the plaintiffs various items of point-of-purchase advertising material. These accompanied merchandise being shipped to plaintiffs by railroad carrier, and title to all such material passed to plaintiffs upon de-

livery to the carrier in Missouri or Illinois. The subsequent use of the material in California by the plaintiffs was at their sole discretion.

3. From July, 1950, to October 31, 1954, all orders that were received by this company from purchasers situated in California came under my supervision. There were only two customers in California who purchased merchandise from the [34] company: The LeVecke Company (formerly described as The LeVecke Distributing Company) and Drexel Distributing Company. All the orders received from these two purchasers were subject to acceptance by the seller at its offices in St. Louis or in Belleville. All such orders first were subject to the approval of the Sales Department, which procedure was done under my supervision. Said orders were also subject to approval by the Credit Department, which was under the supervision of Melvin B. Feig who was Credit Manager of the company throughout said period. Final acceptance of the orders was made by shipment of the merchandise by railroad carrier to the purchaser, f.o.b. this company's plants. At time of shipment an invoice was mailed to the purchaser for payment of the entire purchase price. The purchaser took title upon delivery to the railroad and assumed all risk of loss. No shipments were ever made to the plaintiffs or to anyone else in California on a consignment basis.

4. Purchase Order No. 264 of the LeVecke Company dated June 10, 1954, which is attached as Exhibit A to this affidavit, is an actual order received by the company from the plaintiffs in June,

1954, and it is truly representative of the manner in which the plaintiffs purchased beer from said company. The form entitled "Distributor Purchase Order" dated June 11, 1954, which is attached as Exhibit B to this affidavit is the form used by the company in approving the purchase order referred to above. Approval by both the Sales Department and by the Credit Department of the company were necessary for the acceptance by it of the order. The bill of lading dated June 16, 1954, which is attached as Exhibit C to this affidavit, is an actual copy of the bill of lading sent [35] to the plaintiffs at the time of acceptance of their purchase order referred to above, by shipment of the merchandise. The invoice dated June 16, 1954, which is attached as Exhibit D to this affidavit, is an actual copy of the original invoice which was mailed to the plaintiffs in the ordinary course of business upon shipment of the goods described in the bill of lading.

5. The receipt of the order from the plaintiffs through the mail from California, the approval of the order by the Sales Department and by the Credit Department, the acceptance of the order by shipment of the goods and the billing for the purchase price, all as shown by these exhibits A, B, C and D, are truly representative of the manner in which all sales of its merchandise to the plaintiffs were handled by said company during the period referred to in the complaint.

6. Purchase Order No. 55855 of Drexel Distributing Company, dated July 1, 1954, which is attached as Exhibit E to this affidavit, is an actual



order received by the company through the mail from Drexel Distributing Company in July, 1954. The exhibit is truly representative of the manner in which all orders were received from that purchaser. The form entitled "Distributor Purchase Order," dated July 6, 1954, which is attached as Exhibit F to this affidavit, is the form used by the seller in approving the purchase order referred to above. Approval of both the Sales Department and the Credit Department of the company were necessary for the acceptance by it of the order. The bill of lading dated July 13, 1954, which is attached as Exhibit G to this affidavit, is an actual copy of the bill of lading sent to Drexel Distributing Company at the time of the acceptance of its purchase order referred [36] to above, by delivery of the merchandise to railroad carrier for shipment to said purchaser. The invoice dated July 13, 1954, which is attached as Exhibit H to this affidavit, is an actual copy of the original invoice which was mailed to Drexel Distributing Company in the ordinary course of business upon shipment of the goods described in the bill of lading.

7. The receipt of the order from Drexel Distributing Company through the mail from California, the approval of the order by the Sales Department and by the Credit Department of the company, the acceptance by delivery of the goods to the railroad carrier for shipment to the purchaser and the billing for the purchase price, all as shown by these exhibits E, F, G and H, are truly representative of the manner in which all sales of its merchandise

to Drexel Distributing Company were handled by said company during the period referred to in the complaint.

/s/ HENRY G. SEWING, JR.

Subscribed and sworn to before me, a Notary Public in and for the City of St. Louis, this 31st day of March, 1955.

[Seal]            /s/ FRED E. HELLER,  
Notary Public [38]





PHONE VA. 7844

SELLER'S COPY

PURCHASE ORDER

*The LeVecke Company*

Nº 264

1807 EAST OLYMPIC BOULEVARD  
LOS ANGELES 21, CALIFORNIA

THIS ORDER NUMBER  
MUST APPEAR ON INVOICE

DATE June 10 1964

TO: Criesdieck Western Brewery Company  
ADDRESS: 3607 North Florissant  
Saint Louis 7, Missouri

GENTLEMEN: BEING GOVERNED BY INSTRUCTIONS HEREON, PLEASE ENTER OUR ORDER FOR THE FOLLOWING:

SHIP TO: The LeVecke Company  
WHEN: at once  
ROUTING: Wabash-Santa Fe  
CONFIRMING:

QUANTITY	UNIT	PACK & SIZE	DESCRIPTION	PRICE	UNIT
1250	48	12	Hyde Park Beer - 8/6 cans		

ORDERS TO BE EFFECTIVE MUST  
BE MADE OUT ON THIS FORM AND  
BEAR AN AUTHORIZED SIGNATURE

BY: *Read J. LeVecke*



DISTRIBUTOR PURCHASE ORDER

HYDE PARK

RIESEBIECK WESTERN BREWERY COMPANY  
BELLEVILLE, ILLINOIS - ST. LOUIS, MISSOURI

Date 6/11/54

Ordered by: The LeVecke Co.  
Los Angeles, Calif.

Ship to: The LeVecke Co.  
1807 E. Olympic Blvd.  
Los Angeles, Calif.

Customer Order No. 264 Requested Shipping Date: AT ONCE

Routing: RABASH - SANTA FE

Special Instructions

STAG PACKAGE BEER	NUMBER OF PALLETS		TOTAL CASES
% Export Bottles, 24/12 oz.	42	49	1250
% Export Bottles, 36/7 oz.	42	56	
% Flat Top Cans, 8/6 Pack	35	42	
% Flat Top Cans, 12/4 Pack	35	42	
% Flat Top Cans, 24/12 oz.	70	77	
% Flat Top Cans, 12/12 oz.	140	154	
% One Way, 4/6 Pack	49	56	
% One Way, 12/12 oz.	98	112	
One Way Quarts, 12/32 oz.	35	42	
% Export Bottles, 24/12 oz.	42	49	
% Export Bottles, 36/7 oz.	42	56	
% Flat Top Cans, 8/6 Pack	35	42	
% Flat Top Cans, 12/4 Pack	35	42	
% Flat Top Cans, 24/12 oz.	70	77	
% Flat Top Cans, 12/12 oz.	140	154	
% One Way, 4/6 Pack	49	56	
% One Way, 12/12 oz.	98	112	
% One Way Quarts, 12/32 oz.	35	42	

DO NOT WRITE IN SPACE BELOW

SALES DEPARTMENT APPROVAL

By Lucille O'Neill

CREDIT DEPARTMENT APPROVAL

By [Signature]

TERMS:

No. 381

STAG DRAUGHT BEER

Barrels Golden Gate	3.2% Barrels Golden Gate
Half Barrels Golden Gate	3.2% Half Barrels Golden Gate
Half Barrels Peerless Tap	3.2% Half Barrels Peerless Tap
Quarter Barrels Golden Gate	3.2% Quarter Barrels Golden Gate

NAME \_\_\_\_\_ BY \_\_\_\_\_

CREDIT DEPARTMENT



Form 113-A

Printed in U. S. A.

(For use in connection with Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Canada's Class- 2nd Sheet Classification Territories, March 18, 1922, as amended August 1, 1931, and June 16, 1941.)



# THIS SHIPPING ORDER

## WABASH RAILROAD COMPANY

Must be legibly filled in, in ink, in indelible pencil, or in carbon and retained by the Agent.

Shipper's No. \_\_\_\_\_

Agent's No. H. 264

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order,

At St. Louis, Mo. June 16 1954, 19 From Wabash Railroad Eastern Railway Co. St. Louis, Mo.

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, numbered, and described as indicated below, which said company (the world) hereby undertakes to deliver to the consignee at the place of destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions set forth in the tariffs, printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to The Loveco Distributing Co. 267 West Lamar, Blvd.

Destination Los Angeles State of California County of \_\_\_\_\_

Route Absecon Santa Fe

Delivering Carrier \_\_\_\_\_ Car Initial \_\_\_\_\_ Car No. 2206

No. Pkgs.	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*Weight (Subject to Correction)	Class or Rate	Class. Cal.	Remarks
1250	Cases Beer, 48/12 oz. lat top cans in fibre cartons (8/6 pack) 11	61,750	105.		Subject to Section 7 of conditions. If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and charges legal charges.
	ETA # 151930-151931				Signature of Consignor: _____ (Signature of Consignor.)
	This shipment is accepted under the provisions of rule 49 consolidated classification of freight classification point				If charges are to be prepaid, write or stamp here, "To be Prepaid."
	Correct weight: 61,750 lbs.				Received \$ _____ to apply to prepayment of the charges on the property described hereon.
	Subject to the BUREAU of the Missouri State Bureau of Weights and Measures 4836				Agent or Cashier _____
					Per _____ (The signature here acknowledges only the amount prepaid.)

NOTE: Where the rate is dependent on value, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE: Where the rate is dependent on value, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding \_\_\_\_\_

Wabash Railroad Eastern Railway Co. St. Louis, Mo. Shipper. Agent must detach and retain this Shipping Order and must sign the Bill of Lading.

Per Edward Moor

Permanent postoffice address of shipper: 367 So. Florissant Ave., St. Louis, Mo.

COPIES OF THIS FORM PRINTED AT ST. LOUIS, MO.

26  
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Sheppard, H. A. Richter & Baith





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XXXXXXXXXXXXXXXXXXXX

Lyde ark lant

St. Louis, Mo.  
June 16 1954

Cart  
O A R K  
90686

The LeVeque Distributin Co.  
1807 East Olympic Blvd.  
Los Angeles, 21 Calif.

C 577 H P

aband-Santa Fe.

H. of I.

264

1250 Cases Beer, 48/12 oz. Flat top cans ( 9/6 cond) H \$ 4.18 3 5,422.50

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DISTRIBUTOR PURCHASE ORDER

STAG

RIESEDECK WESTERN BREWERY COMPANY  
BELLEVILLE, ILLINOIS - ST. LOUIS, MISSOURI

Date 7/6/54

Ordered by: The LeVecke Co.  
1807 E. Olympic Blvd.  
Los Angeles, Calif.

Ship to: Drexel Dist. Co.  
320 Market Street  
Los Angeles, Calif.

Order No. 55855 Requested Shipping Date: TO ARRIVE JULY 19th

Special Instructions: HABASH SANTA FE

STAG PACKAGE BEER	NUMBER OF PALLETS		TOTAL CASES
Export Bottles, 24/12 oz.	42	49	175
Export Bottles, 36/7 oz.	42	56	
6 at Top Cans, 8/6 Pack	35	42	
6 at Top Cans, 12/4 Pack	35	42	
6 at Top Cans, 24/12 oz.	70	77	
6 at Top Cans, 12/12 oz.	140	154	
6 1/2 Way, 4/6 Pack	49	56	
6 1/2 Way, 12/12 oz.	98	112	
6 1/2 Way Quarts, 12/32 oz.	35	42	
Export Bottles, 24/12 oz.	42	49	
Export Bottles, 36/7 oz.	42	56	
6 at Top Cans, 8/6 Pack	35	42	
6 at Top Cans, 12/4 Pack	35	42	
6 at Top Cans, 24/12 oz.	70	77	
6 at Top Cans, 12/12 oz.	140	154	
6 1/2 Way, 4/6 Pack	49	56	
6 1/2 Way, 12/12 oz.	98	112	
6 1/2 Way Quarts, 12/32 oz.	35	42	

DO NOT WRITE IN SPACE BELOW

SALES DEPARTMENT APPROVAL  
By Lucille O'Neill

CREDIT DEPARTMENT APPROVAL  
By [Signature]

TERMS: R of I  
Invoice Drexel Dist Co  
San Francisco Cal

No. 411

STAG DRAUGHT BEER	
3.2% Barrels Golden Gate	_____
3.2% Half Barrels Golden Gate	_____
3.2% Half Barrels Peerless Tap	_____
3.2% Quarter Barrels Golden Gate	_____

BY \_\_\_\_\_  
CREDIT DEPARTMENT





Form 113-A

# 55855

For use in connection with Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western, and Illinois Classification Territories, March 16, 1928, as amended August 1, 1930, and June 19, 1941.



THIS MEMORANDUM

is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading nor a copy or duplicate covering the property named herein, and is intended solely for filing or record.

Shipper's No. \_\_\_\_\_

Agent's No. \_\_\_\_\_

WABASH RAILROAD COMPANY

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

to be made to \_\_\_\_\_, 19\_\_\_\_ From \_\_\_\_\_

property described below, to apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word "company" being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own line or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

consigned to \_\_\_\_\_ (Mail or street address of consignee—For purposes of notification only.)

destination \_\_\_\_\_ State of \_\_\_\_\_ County of \_\_\_\_\_

route \_\_\_\_\_

delivering Carrier \_\_\_\_\_ Car Initial \_\_\_\_\_ Car No. \_\_\_\_\_

No. Pkgs.	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	Weight (Subject to Correction)	Class or Rate	Check Col.	Car No. 8104
99	one case of 12/12 on 1/2 1/2 case in	46.175	100		Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignee, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (Signature of Consignor.) If charges are to be prepaid, write or stamp here, "To be Prepaid."  Received \$ _____ to apply in prepayment of the charges on the property described hereon.  Agent or Cashier, _____  Per _____ (The signature here acknowledges only the amount prepaid.)  Charges Advanced: \$ _____
173	one case of 12/12 on 1/2 1/2 case in	7.235			
175	one case of 12/12 on 1/2 1/2 case in	61.225			
6	one case of 12/12 on 1/2 1/2 case in	6			

Per \_\_\_\_\_ Shipper. Per \_\_\_\_\_ Agent.

Permanent postoffice address of shipper \_\_\_\_\_



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Form No. 11.4-10M-1-54



# GRIESEDIECK WESTERN BREWERY CO.

BELLEVILLE, ILLINOIS

103 YEARS CONTINUOUS BUSINESS 1851-1954

Trade Mark: Plant

SOLD TO

BY  
103 Cases, Dif.

St. Louis, Mo.  
July 13, 1954

C  
J. R. X  
MIAA

C 597 R P

SHIP VIA TERMS: . of I. ORDER No. 550 6

QUANTITY	Container Deposit	BEER	TOTAL
175	Cases Beer, 48/12 oz. Flat top cans (8/6 pack) Stag	\$ 4.72	\$ 826.00

46

We the undersigned, do hereby guarantee that the articles listed herein are not adulterated or misbranded within the meaning of the Federal Food and Drugs Act, June 30, 1906, as amended.

GRIESEDIECK WESTERN BREWERY CO

27  
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29  
30

Sheppard,  
Mullin, Richter  
& Balch

-20-

EXHIBIT "H"



EXHIBIT No. 3

AFFIDAVIT IN SUPPORT OF MOTION BY  
DEFENDANT THE GRIESEDIECK COM-  
PANY

State of Missouri,  
City of St. Louis—ss.

Melvin B. Feig, being first duly sworn, on his oath says:

1. I reside at Collinsville, Illinois. I was the Credit Manager of the Griesedieck Western Brewery Company (now named the Griesedieck Company) from 1949 to November 1, 1954, and at all times referred to in the complaint of William LeVecke, et al. I have personal knowledge of the facts stated herein.

2. During said period all orders that were received by the company from purchasers situated in California came under my supervision as Credit Manager. There were only two customers in California who purchased merchandise from the company: The LeVecke Company (formerly described as The LeVecke Distributing Company) and Drexel Distributing Company. All purchase orders from these two purchasers were subject to acceptance by this company at its offices in St. Louis or in Belleville. All said orders had to receive the approval of the Sales Department and the approval of the Credit Department of the company before acceptance. The approval by the Credit Department was given under my supervision as Credit Manager.

Final acceptance of the orders was made by delivery of the merchandise to the railroad carrier for shipment to the purchaser, f.o.b. this company's plants. At time of shipment an invoice was mailed from St. Louis or Belleville to the purchaser in California for payment of the entire purchase price. No shipments were ever made to the plaintiffs or to anyone else in California on a consignment basis.

3. I have read the affidavit of Henry G. Sewing, Jr., dated March 31, 1955, relating to these matters and examined Exhibits A, B, C, D, E, F, G and H to said affidavit. The statements made therein by said affiant in regard to those exhibits [47] are correct. Exhibits A, B, C, D, E, F, G and H to the affidavit of Henry G. Sewing, Jr., filed herewith, truly represent the manner throughout the period referred to in the complaint of William LeVecke et al. in which the purchase orders were:

(a) received by mail from the plaintiffs and from Drexel Distributing Company;

(b) processed for approval by the Sales Department and by the Credit Department of the company;

(c) accepted by delivery of the goods to the railroad carrier for shipment to the purchaser;

(d) billed to the purchasers for the purchase price.

/s/ MELVIN B. FEIG



Subscribed and sworn to before me, a Notary Public in and for the City of St. Louis, Missouri, this 31st day of March, 1955.

[Seal]                /s/ BETTY PROCTOR,  
  Notary Public [49]

EXHIBIT No. 4

AFFIDAVIT IN SUPPORT OF MOTION BY  
DEFENDANT THE GRIESEDIECK COM-  
PANY

State of Missouri,  
City of St. Louis—ss.

August L. Griesedieck, being first duly sworn, on his oath says:

1. I reside at 6900 West Main Street, Belleville, Illinois. I am Secretary of The Griesedieck Company, formerly named Griesedieck Western Brewery Company, and I have been the Secretary of said corporation from November 1, 1954, to date. I have personal knowledge of the facts stated herein.

2. On March 21, 1955, this corporation received at its office address at Belleville, Illinois, by registered mail from Frank M. Jordan, Secretary of State of the State of California, the following papers:

(a) Copy of order for service of defendant Griesedieck Western Brewery Company by serving Secretary of State of California, said order dated March 1, 1955, being entered in cause No. 640630

in the Superior Court of the State of California in and for the County of Los Angeles.

(b) Copy of summons issued by the Clerk of said Court in said cause and directed to Griesedieck Western Brewery Company, a corporation.

(c) Copy of complaint of William LeVecke and Reed LeVecke in said cause.

(d) Letter dated March 17, 1955, from the said Frank M. Jordan, Secretary of State of California, addressed to Griesedieck Western Brewery Company, stating that the papers enclosed with the letter were delivered to said Secretary of State on March 10, 1955, for the purpose of serving the corporation. [50]

3. No service of summons or process of any kind in said cause No. 640630 has been made on this corporation or upon any of its officers or agents, other than the attempted service by delivery of the papers in the manner described in paragraph two above.

/s/ AUGUST L. GRIESEDIECK

Subscribed and sworn to before me, a Notary Public in and for the City of St. Louis, Missouri, this 1st day of April, 1955.

[Seal]           /s/ BETTY PROCTOR,  
Notary Public [52]

Affidavit of Service by Mail attached. [53]

[Endorsed]: Filed April 4, 1955.

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION TO SET  
ASIDE, VACATE, AND QUASH SERVICE  
OF SUMMONS AND COMPLAINT AND  
NOTICE OF MOTION AND MOTION TO  
DISMISS

To the Plaintiffs Above Named and to Messrs.  
Larwill & Wolfe, and Thomas A. Wood, Esquire,  
1017 Citizens National Bank Building, Los Angeles  
13, California, their attorneys, and To Whomsoever  
It May Concern:

You and Each of You Will Please Take Notice  
that the defendant Carling Brewing Company In-  
corporated, a corporation, appearing specially and  
solely for the purpose of making these motions,  
notice of which is given herewith, will on Monday,  
April 25, 1955, at the hour of 10:00 o'clock a.m.,  
of said day, or as soon thereafter as counsel may  
be heard, in the court room of the Honorable Leon  
R. Yankwich, Judge of the above named Court, in  
the United States Post [54] Office and Court House  
Building, Los Angeles 12, California, move the  
above named Court as follows:

1. To dismiss the action, and each cause of action  
thereof or in lieu thereof to quash the summons  
and the return of service of summons attempted to  
be effected upon Carling Brewing Company Incor-  
porated by serving K. W. Burrie, the regional rep-  
resentative of the defendant Carling Brewing Com-

pany Incorporated for the reason that this Court has no jurisdiction over the person of this defendant.

2. To dismiss the action, and each cause of action thereof or in lieu thereof to quash the summons and the return of service of summons attempted to be effected upon Carling Brewing Company Incorporated by serving K. W. Burrie, the regional representative of the defendant Carling Brewing Company Incorporated for the reason that such attempted service of process was and is insufficient.

3. To dismiss the action, and each cause of action thereof or in lieu thereof to quash the summons and the return of service of summons attempted to be effected upon Carling Brewing Company Incorporated by serving K. W. Burrie, the regional representative of the defendant Carling Brewing Company Incorporated for the reason that such attempted service of process upon a purported cause of action in no way connected with any business done by said defendant in California was and is in violation of due process.

Said motion will be based upon (a) the summons; (b) the complaint of the plaintiffs on file herein; (c) the return of service of summons, if such return shall have been made by the plaintiffs at the time of the hearing on this motion; (d) the memorandum of points and authorities served and filed herewith; (e) the affidavits of Ian R. Dowie and H. R. Trees, hereto affixed as Exhibits "1" and "2", respectively; (f) this notice of motion; and (g) all

other papers, files, and records on file in the above entitled action at the time [55] said motion is heard.

Dated: April 11, 1955.

SHEPPARD, MULLIN, RICHTER  
& BALTHIS

JAMES C. SHEPPARD

EDWIN H. FRANZEN

/s/ CAMERON W. CECIL

Attorneys for Defendants [56]

EXHIBIT No. 1

AFFIDAVIT OF IAN R. DOWIE

State of Ohio,  
Cuyahoga County—ss.

Ian R. Dowie, being first duly sworn on his oath says:

1. I reside at 2360 Delamere Drive, Cleveland Heights, Cuyahoga County, Ohio. I am President of the Carling Brewing Company and I have been the chief executive officer of said corporation from 1951 to date and at all times referred to in the Complaint. I have personal knowledge of the facts stated herein.

2. The Carling Brewing Company is a corporation organized and existing under the laws of the State of Virginia and is licensed to do business as a foreign corporation in the State of Ohio, in which state at 9400 Quincy Avenue, Cleveland, it



has for many years, including all times referred to in the Complaint, maintained its principal offices. For many years prior to November 1, 1954, including all times referred to in the Complaint, and at the present time, Carling Brewing Company has engaged in the manufacturing and selling of beer from its brewery also located at 9400 Quincy Avenue, Cleveland, Ohio. On November 1, 1954, Carling Brewing Company acquired by purchase from The Griesedieck Company (at said time by name The Griesedieck Western Brewery Company) all of said corporation's brewing assets, equipment, real estate, plants and inventory. Since November 1, 1954, (the date of said acquisitions) Carling Brewing Company has also engaged in manufacturing and selling beer from its brewery and offices in Belleville, Illinois and St. Louis, Missouri, respectively.

3. At no time mentioned in the Complaint, nor at the present time, has Carling Brewing Company, directly or indirectly, sold any of its merchandise to the plaintiffs, or to any other persons, firms or corporations in the State of California or elsewhere through the plaintiffs. All business done by [57] Carling Brewing Company with respect to purchasers located in the State of California was in the course of interstate commerce and in the manner hereinafter stated.

4. Orders from purchasers in California for merchandise manufactured by Carling Brewing Company are placed with Carling Brewing Company upon written order blanks and are subject to ac-

ceptance only at Cleveland, Ohio. A copy of said order blank is attached hereto marked Exhibit "A" and made a part hereof. Prior to November 1, 1954, at all times since, and at the present time all shipments of merchandise destined for California originated at said Company's Cleveland, Ohio, Plant and such sales were and are made and billed f.o.b. Cleveland, Ohio.

Title to merchandise of Carling Brewing Company sold to California purchasers passes to such purchasers at the time of delivery by said defendant to the railroad carrier in Cleveland, Ohio. All invoices and statements relating to such sales were and are mailed from the Cleveland Office of Carling Brewing Company directly to the California purchasers.

5. At all times referred to in the Complaint and since, California purchasers of the merchandise of Carling Brewing Company were and are wholesale distributors of the Company's products in California, which said wholesale distributors being duly licensed by the State of California for such business purchased said merchandise for resale and to the best of affiant's knowledge and belief did resell same to other duly licensed wholesale or retail purchasers in California not customers of said Carling Brewing Company. In all instances the said California purchasers from Carling Brewing Company were responsible for and paid all transportation charges from Cleveland, Ohio, to destination of shipment.

6. Neither of the plaintiffs was ever an officer or employee of Carling Brewing Company. Neither



plaintiff ever received a salary and expense account or other personal compensation from Carling Brewing Company. Neither [58] plaintiff ever served Carling Brewing Company in the State of California, or elsewhere, as agent, distributor or in any other capacity whatsoever.

7. Mr. K. W. Burrie is the west coast regional representative of Carling Brewing Company and has desk space in the office of Mr. Ben Fields, Secretary of the Southern California Beverage Wholesalers Association at 6399 Wilshire Boulevard, Suite 405-406, Los Angeles, at which address he also has telephone service and Carling Brewing Company is listed in the telephone book, the phone number being that for the offices at 6399 Wilshire Boulevard. Also Mr. K. W. Burrie has working under his direction in California and on the west coast six field representatives of Carling Brewing Company, four of whom spend substantial amounts of their time in the interests of Carling Brewing Company within the State of California. Said K. W. Burrie and his assistants perform the following duties on behalf of their employer—

(a) They call upon said wholesale distributors of beer and ale of the Carling Brewing Company. Said distributors are requested to maintain their sales and distribution records in accordance with a pattern recommended by Carling and said representatives examine said records from time to time ascertaining and reporting to Cleveland, Ohio, the sales volume and distribution of said Carling products;

(b) They make recommendations to said distribu-

tors encouraging the distributors in their sales efforts of said Carling products in California, also encouraging the use of Carling point of sale material supplied said distributors and making recommendations for the most effective use of the same in the interests of said products;

(c) They seek in their everyday contacts with said distributors, retail customers of said distributors and all others with whom they may come in contact to popularize and promote public acceptance of the beer and ale of Carling Brewing Company; [59]

(d) They accompany sales representatives of said distributors on visits to customers of said distributors encouraging purchases by said customers of said Carling products from said distributors and assisting said distributors in their sales efforts of said Carling products, but any sales resulting from the cooperative effort of said Carling representatives and said distributors' representatives are on account of orders which may be placed by the customers of said distributors with said distributors and not with Carling Brewing Company;

(e) They are "good-will" or "promotional" representatives of Carling Brewing Company and all of their activities, including the foregoing, are of a general character. They conclude no sales in California.

8. None of the aforementioned activities of Carling Brewing Company, or of any of its employees or representatives in the State of California, have any relationship whatsoever to nor have the same in any way given rise to the liabilities sued upon

by the plaintiffs and as stated by the plaintiffs in their Complaint, and this affiant further says that there has been nothing done by Carling Brewing Company in the State of California having any relationship whatsoever to nor have the same in any way given rise to the liabilities sued upon by the plaintiffs.

9. All acts for and on behalf of Carling Brewing Company in the State of California are limited in extent to those acts stated hereinabove.

Affiant further says that at all times mentioned in the Complaint and at the present time the following are acts for and on behalf of said corporation by its officers, employees and agents which were not done in the State of California:

(a) Carling Brewing Company did not and does not maintain [60] an inventory or stock of goods in the State of California; said company did not and does not fill orders from a stock of its beer and ale in the State of California;

(b) Said company did not and does not have any salesmen or other employees accepting in said State orders for said company;

(c) Said company did not and does not fix prices for its merchandise in California; nor approve sales in California of said orders being accepted in the City of Cleveland, Ohio, as aforesated. Prices for said company's merchandise were established only in Cleveland;

(d) Said company did not and does not ship its merchandise to any purchaser in California on a contingent basis;

(e) Said company never sold or shipped any merchandise whatsoever to the plaintiffs;

(f) Said company did not and does not ship its products to California, or elsewhere, by any transportation means owned or leased by it;

(g) Said company did not and does not make local deliveries within California of its products in any manner whatsoever;

(h) Said company does not maintain a bank account in the State of California;

(i) Said company does not make collections or receive any payments for its merchandise within the State of California, all such collections and payments being required to be made and being made in Cleveland, Ohio;

(j) Said company does not make any purchases within the State of California of ingredients, goods or supplies relative to its said products; [61]

(k) Said company did not and does not lend any money or have any interest in any of the independent wholesale distributors handling the merchandise of Carling Brewing Company within the State of California;

(l) Said company did not lend any money to the plaintiffs or have any business relation with said plaintiffs whatsoever either in the State of California or elsewhere;

(m) Said company did not and does not have any officer resident in California or other employee or agent in said State authorized to accept service of process upon it, K. W. Burrie and the others working with him with the limited powers and authority

as aforestated being the only employees resident in said State.

10. Affiant makes the foregoing statements with the understanding that the same may be used in support of a motion on special appearance of said defendant Carling Brewing Company in the case appearing on the docket of the United States Court, Southern District of California, Central District, under No. 18034 P.H. and entitled "William LeVecke and Reed LeVecke, d.b.a. The LeVecke Company, Plaintiffs vs. Griesedieck Western Brewery Co., et al., Defendants."

11. Further affiant saith not.

/s/ IAN R. DOWIE

Subscribed and sworn to before me, a Notary Public in and for the State of Ohio, this 9th day of April, 1955.

[Seal]

/s/ JOHN LADD DEAN,  
Notary Public [62]



1  
2  
3

**DISTRIBUTOR'S ORIGINAL ORDER**  
SUBJECT TO ACCEPTANCE AT CLEVELAND OHIO

DATE ORDER REC'D (LEAVE BLANK)    DISTR ORD NO    SHIPPING DATE REQUESTED    STATE PERMIT NO    FEDERAL NO    TOTAL WEIGHT ORDER NO (LEAVE BLANK)

VIA OWN TRUCK     VIA COMMON CARRIER     ROUTE    CARRIER WILL HAVE EMPTIES    YES    NO

DISTRIBUTOR'S NAME AND ADDRESS    ADDRESS FOR SHIPMENT WHEN NOT THE SAME

S  
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L  
D  
T  
O

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H  
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P  
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	CARTONS ORDERED	RED CAP ALE	WEIGHT		CARTONS ORDERED	BLACK LABEL BEER	WEIGHT
D E P O S I T S		24/12	3.2 H. P.	D E P O S I T S		24/12	3.2 H. P.
		12/32	3.2 H. P.			12/32	3.2 H. P.
		/7	3.2 H. P.				
O N E W A Y S		24/12	3.2 H. P.	O N E W A Y S		24/12	3.2 H. P.
		24/12 Six Pack	3.2 H. P.			24/12 Six Pack	3.2 H. P.
		24/12 Ty-Pack	3.2 H. P.				
		12/32	3.2 H. P.			12/32	3.2 H. P.
C A N S		24/12	3.2 H. P.	C A N S		24/12	3.2 H. P.
		48/12 Six Pack	3.2 H. P.			48/12	3.2 H. P.

SPECIAL INSTRUCTIONS:

NAME OF DISTRIBUTOR  
SIGNED BY

TITLE

EXHIBIT "A"

63

27  
28  
29  
30

Sheppard,  
Hollis, Richter  
& Balchin

EXHIBIT "A"





EXHIBIT No. 2

AFFIDAVIT OF H. R. TREES

State of Ohio,  
Cuyahoga County—ss.

H. R. Trees, being first duly sworn on his oath says:

1. I reside at Mill Hollow Drive, Moreland Hills Village, Ohio. I am Treasurer of the Carling Brewing Company and I have been Treasurer of said corporation from 1951 to date and at all times referred to in the Complaint. I have personal knowledge of the facts stated herein.

2. I have read the affidavit of Ian R. Dowie dated April 9, 1955, and I confirm and agree with the contents thereof. To supplement the aforesaid affidavit I, as chief accounting officer of Carling Brewing Company, supply the following additional information based on my personal knowledge.

3. The only exceptions to the procedures described in the aforesaid affidavit during the four years next preceding the date of this affidavit have been a very few isolated instances when one California purchaser has transferred to another California purchaser, for reasons of the convenience of one or both of such purchasers, limited quantities of Carling Brewing Company's beer and ale. In some such instances, for reasons of the convenience of one or both of such purchasers, a credit or refund has been made by Carling Brewing Company from

Cleveland, Ohio, to the transferor and a charge has been made by Carling Brewing Company at Cleveland, Ohio, to the transferee. Title to such transferred beer and ale passes directly from the transferor to the transferee and the bookkeeping entries made in Cleveland, Ohio, by Carling Brewing Company treat the transaction as an adjustment between two accounts receivable.

4. Affiant makes the foregoing statements with the understanding that the same may be used in support of a motion on special appearance of said defendant Carling Brewing Company in the case appearing on the docket [64] of the United States Court, Southern District of California, Central District, under No. 18034 P. H. and entitled "William LeVecke and Reed LeVecke, d.b.a. The LeVecke Company, Plaintiffs vs. Griesedieck Western Brewery Co., et al., Defendants."

5. Further affiant saith not.

/s/ H. R. TREES

Subscribed and sworn to before me, a Notary Public in and for the State of Ohio, this 10th day of April, 1955.

[Seal]           /s/ JOHN LADD DEAN,  
Notary Public [65]

Acknowledgment of Service attached. [66]

[Endorsed]: Filed April 11, 1955.

[Title of District Court and Cause.]

AFFIDAVIT OF WILLIAM R. LeVECKE IN  
OPPOSITION OF MOTION TO QUASH  
SERVICE OF SUMMONS AND COM-  
PLAINT

State of California,  
County of Los Angeles—ss.

William R. LeVecke, being first duly sworn, deposes and says:

That he is one of the plaintiffs in the above entitled action and is a resident of the State of California. That he has read the affidavit of Reed LeVecke, one of the plaintiffs in said action, and all of the facts contained therein are within this affiant's knowledge and are true and are incorporated herein by reference.

That defendant Griesedieck Western Brewery Company did business in the State of California at all times between the year 1950 and November 30, 1954. That the officers of said defendant were in California during said period of time and personally [74] supervised the sales of the said defendant's products.

Typical of the sales efforts of said defendant in this State, there is related hereinbelow the business efforts of defendant's President, Edward Jones, on three of his visits to California:

1. October 1951. Edward Jones came to California in order to increase the sales of defendant's beer products in this State. At this time affiant accompanied said Edward Jones from place to place in California wherein, in part, the following transpired:

The first two days in Los Angeles with Mr. Jones were spent in calling on some 40 to 50 supermarkets in the area. These consisted of Alexander Stores, Shopping Bags, Thriftymart, and Safeway Stores. In each case Mr. Jones thanked the managers for the fine promotions and the sales of Hyde Park Beer, and he gave them suggestions for increasing the sales of the beer. In some instances he helped stack shelves and bring cases of Hyde Park from the rear of the stores.

The following day he called on Certified Grocers where he and affiant met with Mr. Campbell Stewart, President of the company, and had lunch with Mr. Murray Yunker, Vice President and General Manager. Mr. Yunker took them through their warehouse and explained the operation to Mr. Jones. Their picture was taken in front of the Hyde Park stock in the warehouse, and this picture with an article relative to Mr. Jones' visit appeared in Certified's CoOperator (Exhibit "E").

Mr. Jones and affiant then went to San Francisco where they called on Mr. Jack Egan of the First California Company, who was an acquaintance of Mr. Jones, in an effort, as suggested by Mr. Jones, to obtain the Lucky Store business. Mr. Egan took

Mr. Jones and affiant to meet Mr. Dardi of the Blair Holding Company who was also Chairman of the Lucky Stores, Inc. During this meeting Mr. [75] Jones attempted to sell his company's beer to said Lucky Stores. After this meeting, Mr. Jones expressed himself as very confident that he could secure the Lucky Stores business. Later that day he called on Mr. Ed Million of Drexel Distributing Co. (subsidiary of Safeway) in charge of all purchases of beer and wine for the Safeway chain. Mr. Jones thanked him for the business and told him he was interested in aiding Drexel to step up sales of defendant's beer in California. He also assured Million that the beers of said defendant Griesedieck Western Brewery Company were here to stay on the Pacific Coast. Mr. Jones returned to St. Louis from San Francisco. Upon his return to the brewery, affiant was told that he held a meeting with all of his department heads relative to the merchandising methods that were being employed in California. Mr. Jones then set up a merchandising department at the brewery and patterned its operation after that in California.

2. October 1952. Edward Jones came to California on a sales trip prearranged with affiant. Affiant accompanied Edward Jones on said sales trip for said defendant from place to place in California, and, in part, the following transpired:

Edward Jones arrived the first part of October and upon his arrival he called upon approximately 50 supermarkets where Stag and Hyde Park Beers



were displayed for sale. Mr. Jones thanked the managers for their continued support of his company's products, the said defendant herein, and showed them ways to increase their sales of Hyde Park and Stag Beer.

He then called upon the buyers for Certified Grocers, Shopping Bag, Von's, Thriftymart and others. He assured these buyers that the brewery was financially sound and showed them the brewery's financial report, and assured them that the beers were here to stay on the west coast and that this was not a "fly by night" operation.

The next day he called upon the officials of Certified [76] Grocers and emphasized the fact that the beer products of said defendant were here on the west coast to stay and that he was looking forward to increased sales of defendant's beer products through their organization.

He then went to San Francisco where he called upon the United Grocers, who had just recently started selling the beer products of said defendant. United Grocers is a large co-operative grocery organization similar to Certified. He talked with Mr. Sorenson, the President, and Mr. Henry Reidt, the General Manager of United Grocers. Mr. Sorenson wanted to be assured that this was not a temporary setup and stated that his company had an unhappy experience with a beer that had been supplied to them for a short time and then was taken away by the supplier. Mr. Jones assured them that this would not happen to Hyde Park and Stag, as said

defendant company was here on the west coast to stay. He then gave him a copy of the financial report of said defendant. Mr. Sorenson was very much impressed. From then on, United's branch outlets got behind the beer products of said defendant and sales increased considerably.

While in San Francisco Mr. Jones called on Ed Million of Drexel Distributing Company and thanked him for past business and gave suggestions for increasing sales of said defendant's beer products. Later that day he called upon his friend Mr. Egan and Mr. Dardi in an effort to obtain the Lucky Stores business.

3. October 1953. Edward Jones came to California on a sales trip for said defendant which trip was prearranged with affiant. Affiant accompanied Edward Jones on said sales trip from place to place in California and, in part, the following took place:

Affiant met Mr. Jones in Tucson, Arizona, where Mr. Jones called on outlets handling Stag and Hyde Park beers. From there they drove to Phoenix where Mr. Jones called on Mr. Roland, division manager of the Safeway Company. Mr. Jones congratulated him on the [77] splendid job the Safeway was doing with Stag beer in that district. He then called on A. J. Bayless, President of 24 Bayless Markets in the Phoenix area. Mr. Jones gave Bayless a financial statement of said defendant Griesedieck Western Brewery Company and as-



sured him of the soundness of the brewery and that the beers of said defendant were out here to stay.

Mr. Jones called upon the retail stores in that area. He presented each manager with a mechanical pencil and the buyers for the organization with a Sterling silver bottle opener.

The next day Mr. Jones called on supermarkets in the Los Angeles area, and he presented each manager with a mechanical pencil and discussed with them the sales of said defendant's beer products.

The following day Mr. Jones called upon the buyers for the large chain stores that handled said defendant's beer in the Los Angeles area. Each buyer was given a Sterling silver opener by Mr. Jones and he discussed with them the sale of said defendant's beer products. He also called upon Certified's officials and they too were presented with openers by Mr. Jones. He told them that he was very grateful for the business they had given the said defendant brewery and discussed with them means of increasing the sales of said defendant's beer products.

Mr. Jones next went to San Francisco and called upon United Grocers and Safeway, thanking them for past business and telling them that said defendant was looking forward to more business. Each official of said company was presented with a silver bottle opener. He then called upon the Lucky Stores office and discussed with the officials of said stores defendant's beer products.

On this sales trip, Mr. Jones took pride in telling all accounts that the west coast had a 100% increase in Hyde Park and Stag sales in 1953 over that of 1952, and stated that he was looking forward to an additional 25% increase in 1954. [78]

Mr. Jones and Henry Sewing (merchandising manager of said defendant) returned to California in November of 1953 and attended a party given by the Shopping Bag Stores at the end of a contest on the sale of Hyde Park and Stag in said stores. Mr. Jones donated, on behalf of defendant Griesedieck Western Brewery Company, \$100.00 toward prizes for the event. He stated he was very impressed with the party and the enthusiasm of the employees for the two beer products of said defendant. He gave a talk to the employees and thanked them for their past support in the sale of defendant's beer products and said he was looking forward to attending their party every year. Mr. Jones returned to St. Louis and Henry Sewing remained for two days during which time he inspected the merchandising setup of plaintiffs for the sale of said defendant's beer products.

That defendant Griesedieck Western Brewery Company kept a steady flow of its beer products coming into the State of California between 1950 and November 30, 1954. That the business of said defendant was increased every year until during the year 1954 it became fifth in size of business done in the State of California among all breweries which imported beer into this State. The business

of defendant in this State was due to its direct and constant solicitation of business through its officers and through plaintiffs as defendant's agents and representatives. That the business done by said defendant in the State of California was a substantial part of its business, and because of the business done in California by the said defendant, the latter regarded California as one of its chief markets.

That the said defendant Griesedieck Western Brewery Company at all times directed plaintiffs how to advertise and sell defendant's beer products and controlled the prices at which its beer products were sold in the State of California. [79]

That plaintiffs, in addition to selling the beer products of said defendant, acted for, and were given the authority by said defendant to settle disputes between said defendant and the customers who purchased said defendant's beer products and to distribute and push the placement of defendant's advertising signs in the State of California. Copies of letters relative to such a dispute and advertising matter are set forth as Exhibit "L".

/s/ WILLIAM R. LeVECKE

Subscribed and sworn to before me this 13th day of April, 1955.

[Seal] /s/ BELLE KENNICOTT,

Notary Public in and for the County of Los Angeles, State of California. [80]

Acknowledgment of Service attached. [81]

[Endorsed]: Filed April 14, 1955.

[Title of District Court and Cause.]

AFFIDAVIT OF REED LeVECKE IN OPPOSITION TO MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT

State of California,  
County of Los Angeles—ss.

Reed LeVecke, being first duly sworn, deposes and says:

That he is one of the plaintiffs in the above entitled action and is a resident of the State of California. Reference is made herein to certain exhibits which are filed herewith under a separate cover.

That during the years 1950 to November 30, 1954, inclusive, affiant was the agent and representative of the defendant Griesedieck Western Brewery Company in the State of California and maintained an office in the City of Los Angeles at 1807 East Olympic Boulevard. That said business location was the address of said Griesedieck Western Brewery Company in the State of California. That during said years plaintiffs sold in California and Arizona [82] the beer made by said defendant. That the beer of said defendant was sold under the brand names of Hyde Park Beer and Stag Beer. That from time to time during these years an officer of said defendant would visit California and assist plaintiffs in making sales of the beer products of said defendants. Copies of letters from an officer of said de-

fendant Griesedieck Western Brewery Company which contain references to the sales efforts that the said defendant was making in California are set forth as Exhibit "A".

That when plaintiffs obtained orders for the sale of said defendant's beer products in the State of California, the said defendant would confirm with said vendees the sales arrangement. Many of these sales and arrangements for the same were made personally by the President of said defendant company. In some instances when requested to do so, the President of said defendant company gave said vendees its financial statement to show that it was able to meet its obligations and carry out said sales arrangements. Copies of letters to some of said purchasers are set forth as Exhibit "B" and state therein that the said defendant company is on the Pacific Coast to stay and are adding to its organization in California.

That said defendant at all times closely supervised the work of plaintiffs in California and directed plaintiffs how to carry out their sales efforts and as above stated sent its officers to California to assist plaintiffs in their sales efforts as shown by Exhibits "A" and "B".

That said defendant notified the California purchasers of its beer products that the sale of said beer was business between said purchaser and said defendant. A typical confirmation of said relationship is shown by copies of letters set forth as Exhibit "C".

That Edward Jones, the President of said de-



fendant, assisted in the sale of the beer products of said defendant in the State of California, and while in California's posed in a picture with [83] the plaintiffs whom he introduced as the said defendant corporation's representatives. A copy of said picture is set forth as Exhibit "D".

That as agents for said defendant, plaintiffs handled much of the said defendant's other business matters in California in addition to the sale of beer, and plaintiffs answered correspondence addressed to said defendant as defendant's agent. A copy of letters showing some of these activities are set forth as Exhibit "E".

That said defendant Griesedieck Western Brewery Company advertised its products throughout the State of California. A copy of letters showing some of this advertising is set forth as Exhibit "F".

That said defendant Griesedieck Western Brewery Company delivered to plaintiffs sales delivery books and required plaintiffs to make delivery of defendant's beer products on said delivery slips contained in said books which showed that the beer delivered by plaintiffs was received by the customer in California from said defendant Griesedieck Western Brewery Company through plaintiffs as defendant's agents. Copies of said books are set forth as Exhibit "G".

That on all large sales of beer in California, the orders for said sales were confirmed on an "Order Confirmation," the form of which was approved by said defendant and was signed by plaintiffs as agents and employees of said defendant. A copy of

said "Order Confirmation" is set forth as Exhibit "H".

Letterheads and envelopes of defendant Griesedieck Western Brewery Company with said company's name and principal office address were sent to plaintiffs in California for use by plaintiffs as agents of said defendant. Plaintiffs used said stationery and signed the same as agents and employees of said defendant, and plaintiffs, with the consent of said defendant, held themselves out to the various purchasers of beer in the State of California as agents and employees of said defendant. Some of [84] said letterheads are set forth as Exhibit "I".

Business cards of said defendant Griesedieck Western Brewery Company were sent to plaintiffs in California for use of the latter in California. Said cards show the names of plaintiffs as agents of Griesedieck Western Brewery Company. A copy of a letter sending these cards to plaintiffs and the cards are attached hereto as Exhibit "J".

The said defendant Griesedieck Western Brewery Company is, and has been since 1952, listed in the Central Section of the telephone directory and the Classified Directory of the Pacific Telephone and Telegraph Company in the County of Los Angeles, State of California, at the same address and telephone number as is set forth in Exhibit "J".

That said defendant paid to plaintiffs a commission on all sales in California of said defendant's products to Drexel Distributing Company. That said Drexel Distributing Company is a subsidiary





Dear Bill:

I had planned to bring Sewing with me to California but I believe I would like to defer his coming along at this time because of some other activities that we want him to take care of.

Will this make any difference to you?

If it will be just as convenient for you and me to work the territory together, let me know by return mail.

Very truly yours,

EDJ:eb

/s/ Ed

[88]

[Letterhead of Griesedieck Western Brewing  
Company]

Mr. William R. LeVecke  
The LeVecke Distributing Co.  
1807 East Olympic Boulevard  
Los Angeles 21, California

October 1, 1952

Dear Bill:

I am leaving St. Louis Saturday, October 4th on the Golden Gate, train No. 3, and will arrive in Los Angeles on Monday, October 6th, at 7:35 a.m., and I assume you have a room reserved for me at the Statler Hotel in Los Angeles so that I can get into it immediately.

After taking a shower I will be ready to hit the road with you for the next two or three days and then I would like to go to San Francisco and spend a couple of days with you and your endeavors.

Do not arrange anything for me to do at night be-

Exhibit "A"—(Continued)

cause either you or I will be very tired calling on super markets during the day.

Looking forward with much pleasure to seeing you next week I remain with warmest regards,

Yours sincerely,

/s/ Edward D. Jones, President

EDJ:ES—Via Air Mail

[89]

[Letterhead of Griesedieck Western Brewing  
Company]

October 16, 1951

To Our California Stockholders:

I have just returned from a two weeks' trip to California. I was very much impressed with business conditions there, and particularly the weather as it relates to our products—Hyde Park "75" and Stag Beer.

While there, I called on about thirty supermarkets with our distributor, Mr. William LeVecke, LeVecke Distributing Co., 1807 E. Olympic Blvd., Los Angeles, California, Tel: Vandyke 7944. In all of these markets, I was happy to find Hyde Park "75" prominently displayed and enjoying a good consumer acceptance—thanks to our loyal stockholders in that area who undoubtedly have helped materially in creating this acceptance.

We are now introducing Stag Beer in your area, and I sincerely hope for and will appreciate your continued cooperation. May I suggest that you try Stag Beer and recommend it to your friends, al-

## Exhibit "A"—(Continued)

though I hope it won't be at the expense of Hyde Park "75" which is fast becoming a favorite in California. Both brands are distinct types of beer, and they appeal to most every beer connoisseur. Enclosed find a printed folder explaining the distinct qualities and dryness of Stag Beer. It is worth your reading.

In the event Hyde Park "75" or Stag are not available in your area, won't you be good enough to telephone or write to our distributor, Mr. LeVecke, and give him the name and address of the super-market where you shop. He will promptly follow through and get that market to handle our beers. You can be of material help to your Company by reporting such cases to Mr. LeVecke promptly.

Yours for the continued growth and progress of your Company which is among the leading breweries in the industry.

Sincerely,

Griesedieck Western Brewing Company

/s/ Edward D. Jones, President

EDJ:ak

[90]

Mr. E. W. Plumb

October 20, 1953

Shopping Bag Food Stores

2716 San Fernando Road, Los Angeles, California

Dear Mr. Plumb:

I sincerely appreciate the time you gave our Representative, Mr. William LeVecke, and myself on my recent visit to Los Angeles. It does us a lot of

Exhibit "A"—(Continued)

good to exchange ideas with outstanding merchants like yourself.

Mr. LeVecke and I called on approximately twenty of your stores and made a survey that was most comprehensive. I am sure Mr. LeVecke would be happy to give you excerpts of the survey at any time you would like to know about it.

Let me compliment your firm's policy and the store manager's fine housekeeping throughout the entire area.

I again want to thank you and your organization for the fine business you have been entrusting to us and you may be sure we appreciate this confidence.

Without being egotistical, we are happy to report that our business in your area so far this year is twice what it was in a similar period last year.

I am looking forward to being with you November 11th and I plan to bring our Merchandising Vice-President, Mr. Henry G. Sewing, with me, however, Mrs. Jones will be unable to make the trip.

Very truly yours,

Edward D. Jones

EDJ:lo

Chairman of the Board [91]

Mr. R. E. Lundeen

October 19, 1951

Fitzsimmons Stores Inc.

2600 South Vermont Ave., Los Angeles, Calif.

Dear Mr. Lundeen:

I want to thank you for the courtesy and the time you took to show us the "behind the scenes" equip-

## Exhibit "A"—(Continued)

ment and the other details that you pointed out to us in your new Van Nuys store. I was amazed at the completeness and the details that you have worked out in connection with these new stores.

It was a great pleasure for me to visit your stores with our Mr. LeVecke.

I was particularly impressed with one of your managers, and if my memory serves me correctly, his name is Hank Moffett, in one of your Long Beach stores. He was the most enthusiastic liquor department managers that I met in California. He really should be working for a brewery, because he is a great salesman.

I am sorry that I could not stay over a few days and see the opening at your Van Nuys' store, because as you explained and others have told me, these openings are better than a Ringling Bros. Circus.

At any time when you are in the St. Louis area, I hope you will call on us and inspect our brewery, and if there is anything I can do in this area for your firm, please command me.

Very truly yours,

Griesedieck Western Brewery Company  
Edward D. Jones, President



Exhibit "A"—(Continued)

Via Air Mail

May 22, 1952

Mr. John L. Hamilton  
Pacific Mercantile Co.  
461 Market St., San Francisco 5, Calif.

Dear Mr. Hamilton:

Our representative, Mr. William LeVecke, reports getting our beers established in your good firm. We are most appreciative of this, and you may be sure that we at the Brewery will follow this account and do everything we can at this end to give you good service and satisfaction.

It might interest you to know that our Company is 101 years old, and ranks twelfth in the industry, as shown on the attached reprint from *Modern Brewery Age*.

We do a tremendous distribution job through grocery outlets. As you well know, beer carries extraordinary profits. It is easy to merchandise, and you will find it an excellent piece of merchandise for your great distribution system.

Any time you are in the vicinity of St. Louis, please made arrangements to spend at least a day with us and inspect our facilities.

Sincerely yours,

Griesedieck Western Brewery Company  
Edward D. Jones, President

EDJ:ak—Enc.

[93]



## Exhibit "A"—(Continued)

Via Air Mail

(Copy)

Mr. Lawrence R. Graefe

May 3, 1954

Bob's Market

645 E. Carson, Torrance, California

Dear Mr. Graefe:

We recently learned through the Co-Operator that you are one of the new members of the Certified Grocers Association.

We are one of the suppliers for the Certified Chain, and we enjoy exceptionally fine business from the Certified Group. Our products are Stag Beer and Hyde Park "75" Beer.

Our representative is Mr. William LeVecke, 1807 East Olympic Blvd., Los Angeles, California, phone: Vandyke 7944. If you are not handling our products, a telephone call to Mr. LeVecke will be an easy way to get acquainted with our profitable line for distribution in your neighborhood.

At any time that you are in St. Louis, I would be happy to have you call on us and inspect our facilities.

Very truly yours,

Griesedieck Western Brewery Company  
Edward D. Jones

EDJ:bs

Chairman of the Board

[94]

5/3/54

The attached letter was sent to the following: Lawrence R. Graefe, 645 E. Carson, Torrance, Calif. (Bob's Market); N. & M. Adelson & M. Kaufmann,

Exhibit "A"—(Continued)

15017 S. Crenshaw Blvd., Gardena, Calif. (Marketown); Wayne D. & Glayds A. Graham, 1516 Bayview, Wilmington, Calif. (Graham's Market); George H. & Alvina Stahr, 2120 Harbor Rd., Costa Mesa, Calif. (Stahr's Mkt.); Joseph R. & Mary L. Darnell, P.O. Box 205, Ilyllwidld, Calif. (Idyllwide Mkt.) [95]

Mr. H. L. Sorensen October 19, 1953  
United Grocers, Ltd.  
685 Sixth Street, San Francisco, California

Dear Mr. Sorensen:

I was happy to shake your hand on my recent visit to San Francisco with our Representative, Mr. William LeVecke.

I thought you looked fine and appeared more alert than ever, so I was dumfounded when you said you were on the way to the Doctor's office, but I presumed it was just a periodic check-up which, of course, is always good for all of us.

Let me compliment your firm's policy and the store manager's fine housekeeping throughout the entire area.

I again want to thank you and your organization for the fine business you have been entrusting to us and you may be sure we appreciate this confidence.

Without being egotistical, we are happy to report that our business in your area so far this year is twice what it was in a similar period last year.

Anytime you are in the St. Louis area, I hope

## Exhibit "A"—(Continued)

you will let us show you our fine facilities, and it will be a pleasure to entertain you when you are in the city.

Very truly yours,

Edward D. Jones

EDJ:lo

Chairman of the Board

[96]

October 19, 1953

Mr. F. E. Rowland, District Manager  
Safeway Stores, Inc.  
210 E. Fourth Street, P.O. Box 680,  
Phoenix, Arizona

Dear Mr. Rowland:

I sincerely appreciate the time you gave our Representative, Mr. William LeVecke, and myself on our recent visit to Phoenix. It does us a lot of good to exchange ideas with outstanding merchants like yourself.

Mr. LeVecke and I called on sixty-eight Safeway Stores and made a survey that was most comprehensive, starting in Tucson and ending in San Francisco. I am sure Mr. LeVecke would be happy to give you excerpts of this survey at any time you would like to know about it.

Let me compliment your firm's policy and the store manager's fine housekeeping throughout the entire area.

I again want to thank you and your organization for the fine business you have been entrusting to us and you may be sure we appreciate this confidence.

Exhibit "A"—(Continued)

Without being egotistical, we are happy to report that our business in your area so far this year is twice what it was in a similar period last year.

Anytime you are in the St. Louis area, I hope you will let us show you our fine facilities, and it will be a pleasure to entertain you when you are in the city.

Very truly yours,

Edward D. Jones

EDJ :lo

Chairman of the Board [97]

EXHIBIT "B"

Mr. Henry Reidt

Oct. 21, 1952

Manager United Grocers

685 Sixth Street, San Francisco, Calif.

Dear Mr. Reidt:

It was a pleasure to meet you and Mr. Sorensen a few days ago, and we are most happy with our association with your good firm.

I should like to emphasize that we are on the Pacific Coast to stay, and as revealed in our financial statement that I gave to your Mr. Sorensen, you will believe me when I say that we are financially responsible to carry out our obligations to you and your dealers.

If you have any ideas as to how we may make our association more profitable, and if you can suggest

## Exhibit "B"—(Continued)

how it will function more smoothly, please command me.

With warmest regards,

Very truly yours,

Griesedieck Western Brewery Company  
Edward D. Jones, President

EDJ:ak

[98]

Mr. Henry J. Carty

Oct. 21, 1952

c/o Certified Grocers

401 North LaBrea Ave., Los Angeles, Calif.

Dear Mr. Carty:

It was a pleasure to meet you in Mr. Campbell Stewart's office the other day. I regret that I did not have more time to tell you about our Company and our products. However, our Mr. LeVecke and the Certified group no doubt have acquainted you with our organization.

I would like to reiterate that we are on the Pacific Coast to stay, and if you will inspect our financial statement, you will find that we are financially responsible and that we can carry out our responsibility to your good organization.

If there is anything I can do at this end of the line for you, please command me.

Very truly yours,

Griesedieck Western Brewery Company  
Edward D. Jones, President

EDJ:ak

[99]

Exhibit "B"—(Continued)

Mr. A. D. Murrell

Oct. 21, 1952

1489 W. Washington Blvd., Los Angeles, Calif.

Dear Mr. Murrell:

On my annual visit to California I was unable to see you, but I met you a year ago and was very much impressed with you and your stores. Mr. LeVecke, our representative, and I visited several of your stores. I was particularly impressed with the box car display. We find that point-of-purchase displays of this kind build traffic in stores and sell more of our products.

We are on the West Coast to stay. We are adding to our organization in the California area, and I am sending you one of our financial statements which will prove to you that we are financially responsible and prepared to carry out programs that we undertake.

Any time you are in the St. Louis area, I hope you will arrange to come in and spend the day and let me show you our facilities and something of St. Louis.

If there is anything I can do to facilitate matters for you at this end of the line, please command me.

Very truly yours,

Griesedieck Western Brewery Company  
Edward D. Jones, President

EDJ:ak

[100]







Exhibit "B"—(Continued)

for you at this end of the line, please command me.

Very truly yours,

Griesedieck Western Brewery Company

Edward D. Jones, President

EDJ:ak

[101]

EXHIBIT "C"

Griesedieck Western Brewery Company

Belleville, Illinois

Duca and Hanley Super Market

Sept. 4, 1952

Santa Cruz Boulevard

Menlo Park, California

Gentlemen:

One of our St. Louis stockholders and a resident here, has spent the summer in your town and advised me that they were very much impressed with your fine store and they were happy to be able to purchase Hyde Park "75" at your store. They also stated that many of their friends are patronizing your store and purchasing Hyde Park "75".

We are doing a mighty fine business in California and one super market operator in the Los Angeles area just wrote me of a very simple promotion that he engaged in that might be of interest to you, namely, he built a 100 mass case display and merely put on the top of the display, "Old Time Beer Made in St. Louis . . . Try It" and the price tag, of course, and he reports that 100 cases sold out on Saturday and Sunday morning.

Our representative, Mr. William LeVecke, 1807 East Olympic Boulevard, Los Angeles, will be

## Exhibit "C"—(Continued)

happy to handle any special inquiry that you may have regarding our company or products.

Let me again thank you for your co-operation in stocking and selling our Hyde Park "75".

At any time any members of your organization are in this vicinity, we would be happy to have them inspect our breweries.

Yours very truly,

Griesedieck Western Brewery Company

Edward D. Jones, President

EDJ:ES—Via Air Mail—cc. Mr. Wm. LeVecke,  
LeVecke Distributing Co., Los Angeles, Cali-  
fornia. [102]

Mr. Murray Yunker

October 20, 1953

Certified Grocers of California, Ltd.

2601 South Eastern Avenue

Los Angeles, California

Dear Mr. Yunker:

I sincerely appreciate the time you gave our Representative, Mr. William LeVecke, and myself on my recent visit to Los Angeles. It does us a lot of good to exchange ideas with outstanding merchants like yourself.

I again want to thank you and your organization for the fine business you have been entrusting to us and you may be sure we appreciate this confidence.

Without being egotistical, we are happy to report that our business in your area so far this year is twice what it was in a similar period last year.

Exhibit "C"—(Continued)

Mr. LeVecke and I have made a comprehensive survey of the Los Angeles area on beer sales and beer distribution and, I am sure, Mr. LeVecke would be happy to give you excerpts from it which you will find most interesting.

As I view it, your operation, as it relates to beer sales and beer distribution, is ideal. I think in another six or twelve months it will be one of your most profitable divisions, because of certain high costs, warehouse and delivery expenses that are winding themselves around the beer industry. You have the answers with your operation and with a little more patience, I am sure it will be very gratifying to you and your members.

Mr. LeVecke and his organization has developed the best merchandising plan in the beer industry, and your members can profit by it if they will give us cooperation, plus the "green light" in building displays and other mass sales appeals.

Our survey reveals, not only in your area but in other metropolitan areas in the United States, that sales of beer in grocery outlets are mounting every day. [103]

Anytime you are in the St. Louis area, I hope you will let us show you our fine facilities, and it will be a pleasure to entertain you when you are in the city.

Very truly yours,

Edward D. Jones

EDJ:lo

Chairman of the Board [104]



### Brewery President Visits Certified; Lauds Organization

Mr. Edward Jones, President of the Griesedieck Western Brewery Company of Belleville, Ill., and St. Louis, Missouri, brewers of Hyde Park "75" and Stag (sugar-free) beer, recently visited Certified's headquarters on his trip to the west coast.

Mr. Jones spent several days surveying the merchandising job being done on the two fine beers in California. He visited thirty or forty markets in the area and thought them to be phenomenal and commented on the good housekeeping in them and the fine merchandising of beer which is becoming a faster selling grocery item every day. He said the eyes of the east would be upon the west as a criteria for advanced and improved methods in distribution of beer, stating that the east could easily pattern California in the pursuit of better displays, better merchandising and better sales.

The brewery president was impressed with the size, efficiency, and volume of Certified Grocers and was amazed at the headquarters' facilities. He expressed appreciation of the good will of Certified members and offered any assistance that his firm could render to help promote the beers distributed through Certified.

Taking cognizance of the fact that Certified works on a volume basis, Mr. Jones pointed to his firm's similar belief that business thrives on turnover rather than the difference between cost and selling price.



HYDE PARK "75" REPRESENTATIVES—On his recent visit to Certified's warehouse and beer division, Mr. Edward Jones, second from left, President of the Griesedieck Western Brewing Co., was photographed in front of the Hyde Park stock with (from left) J. Murray Yunker, Certified first vice-president and assistant general manager; and William R. LeVecke and Reed LeVecke, west coast representatives.

### Many Non-Food Items Belong In Markets

Many so-called "non-food items" won't be known by that tag for very long at the rate their sales are increasing in food stores. The one-stop shopping trend and self-service in grocery stores is revolutionizing the retail trade. There's plenty of proof now that certain "non-food" items belong in markets because that's where the customer wants to do her shopping. After all, its the public vote that counts, and its been proven that more people "vote" on their preferences for brands of cigarettes than vote for the President of the United States. Consumer choice is the real voting power in our economy and democratic way of life.

What do other publications say about this trend?

#### "Printer's Ink" says:

The expanding role of the super market in distribution and the impact its self-service and self-selection techniques must inevitably make on advertising techniques, have yet to be fully appreciated by both merchandising and adver-

tising men. The super market is unquestionably revolutionizing retailing.

1. The super market will eventually compel all mass retailing to go self-service and self-selection. Already the drug chains, the variety chains and even department stores, to a limited extent, are testing self-service. Walgreen's is rapidly expanding its self-service stores.

"2. The super market sells more beer than milk!" It's the Number 1 outlet for cigarettes, soft drinks, candy. It already sells some 30% of the total volume on a few drug items. It is a big factor in housewares, toys, paper items, household items, etc.

"3. The super market is destined to become a junior department store. Several super market chains are already deep in this expansion—Weingarten's in Texas is the outstanding example. In deed, in its trading area, many soft goods and hard goods lines can no longer obtain adequate distribution unless they take on Weingarten's.

(Cont'd on page 7, Col. 1)

### Display Contest

(Cont'd from page one)

All you have to do is to set up an eye-catching display featuring a variety of Aerowax no rub wax, Aerowax paste wax and Wizard Wick in the various sizes. The variety and size of items displayed will be a big factor in the judging. Have your display photographed and submit it to the Advertising Department at Certified by December 10th. If you need help in arranging for a photograph, Western Family magazine is willing to give you that assistance. Simply call Western Family magazine and request that a photograph of your display be taken.

Rules, entry blanks and other details of the contest have been mailed to each member with the Certified bulletin. Watch your bulletin for details.





EXHIBIT "E"

[Letterhead of Greisedieck Western Brewery  
Company]

Mr. Wm. LeVecke April 17, 1953  
LeVecke Distributing Co.  
1807 East Olympic Boulevard  
Los Angeles, California

Dear Bill:

During the month of March the following persons purchased Griesedieck Western Brewing Company stock:

Ralph V. Erdman, 874 Highera St., San Luis Obispo, California.

John P. MacCrossen & Mrs. Laverne C. MacCrossen, 202 Barbara Ct., Concord, California.

A letter of welcome into the "family" of stockholders was written these people telling them you are our representative and that you sell Safeway Stores, and to contact you for any further information.

Yours sincerely,

/s/ Edward D. Jones

EDJ:ES Chairman of the Board [113]

[Letterhead of Griesedieck Western Brewery  
Company]

Mr. Wm. LeVecke July 20, 1953  
LeVecke Distributing Company  
1807 E. Olympic Blvd., Los Angeles, California

Dear Bill:

I thought you might be interested in the enclosed

Exhibit "E"—(Continued)

letter from Mr. Norman Porter of Torrance, California. Of course, we are not interested in his proposition, but thought you might want to get in touch with him if you are in that vicinity.

With kindest regards, I am,

Sincerely yours,

Griesedieck Western Brewery Co.

/s/ Hans, Vice-President

HJ Saemann:bs—Enc.

[114]

[Written in Longhand]

Mail to LeVecke

Norman Porter, 5304 Doris Way  
Torrance, Calif., July 13, 1953

Hyde Park Breweries Ass'n.

St. Louis, Missouri

Dear Sir:

I would greatly appreciate if you would sponsor me for a Catalina Channel Swim.

This feat could be used as an advertising purpose. I'm confident that I can cover the distance.

Personal Record—I was born in St. Louis, Missouri, and attended the Bryn Hill School until the age of eleven, when my folks moved to Chicago where I finished my elementary schooling. Attended High Schools Lindbloom & Austin, graduating from Austin. Total college—2 years in Engineering Sub-

Exhibit "E"—(Continued)

jects (nights). I drink beer moderately and one of my favorites is Hyde Park.

Athletic Record—Swam in pools at St. Louis but got my best early experience in the Mississippi River. I made [115] long distance swims in Lake Michigan. Won 2nd place in Chicago Elementary School Wrestling, and 3rd place in the Open Division for S. W. District Chicago Amateur.

You are welcome to test my ability by having one of your agents contact me in this area (my Phone No. FRontier 5-1281). Please make me an offer. I'm sure that this would greatly increase sales of Hyde Park Beer in this area.

Yours very truly,

/s/ Norman Porter

Mr. Norman Porter,  
5304 Doris Way, Torrance, California

August 4, 1953

Dear Mr. Porter,

The letter which you sent to the Hyde Park Breweries in St. Louis has been forwarded to us and we are very pleased with your interest in Hyde Park beer.

At the present time our program does not afford a sponsorship such as the one you mention in the 'Catalina Channel Swim' but we shall keep your letter in our files and if ever the occasion for such type publicity would arise we will certainly get in touch with you.

You can be assistant to us in the meantime, Nor-

## Exhibit "E"—(Continued)

man by recommending Hyde Park and Stag beers to your friends and associates and if ever you are in the vicinity of our Los Angeles office, The LeVecke Company, 1807 E. Olympic Blvd., Los Angeles 21, California, Room 205, we would be ever so glad to have you stop in to see us.

Very truly yours,

MRL/s

The LeVecke Company [117]

## EXHIBIT "F"

Mr. Robert Fielding

October 19, 1953

United Grocers, Ltd.

685 Sixth Street, San Francisco, California

Dear Bob:

I want to thank you on behalf of Mr. William LeVecke and myself for giving us some of your valuable time on my recent visit to San Francisco. It is always gratifying to me to have an opportunity to exchange ideas with a good merchant like yourself.

Our firm and Mr. LeVecke's organization have and are developing additional merchandising gimmicks for the promotion and sale of beer on premise. We have outlined a comprehensive program and Mr. LeVecke will be happy to go over these plans with you on his next visit to San Francisco.

Let me compliment your firm's policy and the store manager's fine housekeeping throughout the entire area.

Exhibit "F"—(Continued)

I again want to thank you and your organization for the fine business you have been entrusting to us and you may be sure we appreciate this confidence.

Without being egotistical, we are happy to report that our business in your area so far this year is twice what it was in a similar period last year.

Anytime you are in the St. Louis area, I hope you will let us show you our fine facilities, and it will be a pleasure to entertain you when you are in the city.

Very truly yours,

Edward D. Jones

EDJ:lo

Chairman of the Board [118]

[Letterhead of Griesedieck Western Brewery  
Company]

Mr. William LeVecke

October 29, 1952

The LeVecke Dist. Co.

1807 East Olympic Blvd., Los Angeles, Calif.

Dear Bill:

Mr. Jones showed me photographs of your new service panel trucks, and they certainly are outstanding. Stag and Hyde Park are certainly getting a lot of advertising value from them.

I would like to offer one suggestion on any future trucks which you have made up; namely, that the Stag copy be segregated from the "75" copy. The

## Exhibit "F"—(Continued)

sugar-free copy could be combined with Stag on one side and the Premium Pale Beer at Popular Price combined with the "75" emblem on the other side, or at least segregated in such a way that people will know which is the Sugar-Free beer and which is the Premium Pale Beer. I trust you will appreciate the spirit in which this suggestion is offered, and if we can be of any help in this connection, we will be happy to do so.

As usual, Mr. Jones returned from his trip to the West very much enthused about your operation, and as he put it "we have only scratched the surface." One of these days I hope to have the opportunity of coming out and seeing your operation first hand. In the meantime, with kindest regards to you and your family, I am,

Sincerely yours,

Griesedieck Western Brewery Company  
/s/ Hans Saemann  
Assistant Advertising Manager

HJ Saemann :ak

[119]



Exhibit G consists of a Book of Invoices (Original and Duplicate) numbered from C17601 to and inclusive of C17650.

CITY DELIVERY—BOTTLED BEER INVOICE



Received in good order from

**GRIESEDECK WESTERN BREWERY COMPANY**  
 3607 N. FLORISSANT AVE. GARfield 0370

St. Louis 7, Mo., \_\_\_\_\_ 195\_\_

Sold to \_\_\_\_\_

Address \_\_\_\_\_

Mo. Lic. No. \_\_\_\_\_ Terms \_\_\_\_\_

3.2%	5%	CASES STAG BEER	AMOUNT
		24-12 oz. Exports	
		24-12 oz. Cans	
		12-12 oz. Cans	
		12-12 oz. One Ways	
		4-6 One Ways	
		12-32 oz. Quarts	

Cash Refund   **Total Charges**

QUAN. \_\_\_\_\_ EMTIES RETURNED \_\_\_\_\_

Cases with 24-12 oz. Bottles

Export Cases and Bottles not sold but remain the property of G. W. B. CO.

Allowances \_\_\_\_\_  
 Cash \_\_\_\_\_  
 Total Credits \_\_\_\_\_  
 Balance \_\_\_\_\_

CUSTOMER'S SIGNATURE \_\_\_\_\_ **C 17601**

DRIVER'S SIGNATURE \_\_\_\_\_ **120**



EXHIBIT "H"

## ORDER CONFIRMATION

TO:

THANK YOU FOR YOUR ORDER # \_\_\_\_\_  
 FOR THE FOLLOWING ITEMS

HYDE PARK "75" BEER

STAG BEER

_____ 24/12oz cans	_____
_____ 12/12oz cans	_____
_____ 24/12oz 4/6 cans	_____
_____ 48/12oz 8/6 cans	_____
_____ 24/12oz 4/6 1 way bot.	_____
_____ 12/12oz 1 way bot.	_____
_____ 12/32oz 1 way qt bot.	_____

STOUT "75" MALT LIQUOR \_\_\_\_\_

THIS ORDER IS BEING SHIPPED ON \_\_\_\_\_  
 AND SHOULD REACH YOUR WAREHOUSE BY \_\_\_\_\_

GRIESEDIECK WESTERN BREWERY CO.

By:





**GRIESE DIECK WESTERN BREWERY COMPANY**

2407 NORTH FLOISSANT • ST. LOUIS 7, MISSOURI • TELEPHONE: GARFIELD 0370



GRIESE DIECK WESTERN BREWERY COMPANY  
143 YEARS OF CONTINUOUS BUSINESS, 1851-1994  
1607 NORTH FLOISSANT ST. LOUIS 7, MO

OUR PRODUCTS ARE SOLD ON ORDER-TO-ORDER BASIS ONLY. WE ISSUE NO CONTRACTS, AGENCIES, OR FRANCHISES.





ADVERTISEMENT "J"


**GRUESBIECK WESTERN BREWERY COMPANY**

2887 NORTH FLOREISSANT - ST. LOUIS 7, MISSOURI - TELEPHONE: BAEFIELD 0378

August 4, 1952

Mr. Reed J. LeVecke  
 The LeVecke Distributing Co.  
 1807 E. Olympic Blvd.  
 Los Angeles, California.

Dear Reed:

As per your letter of August 1st, we have today instructed the printer to send you a thousand each of the Hyde Park and Stag blank business cards. They have promised to get them out to you today, so they should be in your hands within the next few days.

Kindest regards.

Very truly yours,

GRUESBIECK WESTERN BREWERY CO.

A handwritten signature in cursive script that reads "H.J. Saemann".

Assistant Advertising Manager

HJSaemann:bs



WILLIAM R. HAVICKI

GRUESBIECK WESTERN BREWERY CO.

 PHONE VARIOUS 7544  
 18 71 1/2 OLYMPIC BLVD  
 LOS ANGELES 2, CALIF.



EXHIBIT "K"

[Western Union Telegram]

LSA034 OB084 1954 Sep 30 AM 2 31

O.SFNO81 NL PD-FAX San Francisco Calif 29

William R LeVecke, LeVecke Dist Co—  
1807 East Olympic Blvd LOSA—

We Have Been Selling Stag In Fresno At 15  
Cents, 6/90 Cents. Do You Want Us To Raise To  
17 Cents, 6/99 cents?—

—C H Jones Drexel Distributing Company  
15 Cents 6/90 Cents 17 Cents 6/99 Cents?—

EXHIBIT "L"

[Letterhead of Drexel Distributing Company]

Mr. William R. LeVecke Feb. 17, 1954  
LeVecke Distributing Company  
1807 East Olympic Blvd., Los Angeles 21, Calif.

Dear Bill:

On Invoice No. 9040 dated December 14, 1953, for  
540 cases of 8/6/12 oz. cans Stag beer, we were  
billed at \$4.80. Previous to that the price had been  
\$4.60. This particular shipment was a drop ship-  
ment, and as a result the billing price was possibly  
billed at the higher rate. If this is the case, please  
let us know so that the Accounting Department can  
mark their records accordingly. However, if the  
amount was in error, we probably should receive  
credit for the difference.

## Exhibit "L"—(Continued)

Can you look into this and let us know what the correct price on that particular shipment was at your first opportunity.

Very truly yours,

Drexel Distributing Company

CHJ/iw

/s/ C. H. Jones

[125]

[Letterhead of Drexel Distributing Company]

Mr. William R. LeVecke

April 30, 1954

LeVecke Distributing Company

1807 East Olympic Blvd., Los Angeles 21, Calif.

Dear Bill:

The Stag movable sign was accepted by the Fresno Zone, and they would like to have twenty-seven of them to place in their stores.

Can you arrange to have that number delivered to the Zone office at 160 South Fulton St. in Fresno?

Have the signs sent to the attention of Bob Hurlburt, or if one of your merchandising crew could call on Mr. Hurlburt he can give him the details as to how they should be handled.

Very truly yours,

Drexel Distributing Company

CHJ/iw

/s/ Chuck Jones

[126]

Mr. C. H. Jones

May 3, 1954

Drexel Distributing Company

609 Sutter St., San Francisco 2, California

Dear Chuck,

Thank you for your letter of April 30th. We

Exhibit "L"—(Continued)

were certainly glad to learn that the Fresno division has accepted the Stag animated sign.

Reed is going to be in Fresno sometime next week, and will deliver the signs to Mr. Hurlburt and assist him in every way possible.

I am going to drop a line to Mr. Hurlburt and tell him of our plans.

Thanks very much, Chuck, and my kindest personal regards.

Yours very truly,

.....

WRL/ms

Wm. R. LeVecke

[127]

C. H. Jones

August 9, 1954

Drexel Distributing Company

609 Sutter St., San Francisco 2, Calif.

Dear Chuck:

Thank you for your letter of August 6 referring to the billing of 1,000 Flat Top can openers.

Please mail the bill for the openers to us.

These openers were shipped to your Arizona division as requested by Mr. Watson.

The openers are to be gratis. The brewery has billed you in error. Please forward the invoice to me for further handling.

Exhibit "L"—(Continued)

My personal regards.

Very truly yours,

.....  
 William R. LeVecke

WRL/ms—cc: D. Gianuzzi [128]

Acknowledgment of Service attached. [129]

[Endorsed]: Filed April 14, 1955.

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 [Title of District Court and Cause.]

## AFFIDAVIT OF WILLIAM LEVECKE

In Opposition to Motion of Defendant Carling  
 Brewing Company To Set Aside, Vacate and  
 Quash Service of Summons and Complaint and  
 Notice of Motion and Motion to Dismiss

William LeVecke, being first duly sworn, deposes  
 and says:

That he is one of the plaintiffs in the above en-  
 titled action.

That defendant Carling Brewing Company has  
 at all times mentioned in said action and now has  
 an office and employees in the State of California.  
 Said employees supervise, advertise and aid the sale  
 of said defendant's beer products, and control the  
 prices thereof, in the State of California and are  
 paid by defendant for this service. The employees  
 of said defendant in the State of California per-



form services for said defendant as more fully outlined in the affidavit of Ian R. Dowie attached to said defendant's notice of motion to set aside, vacate and squash service of summons and complaint. Said defendant's California office has been and now is at 6339 Wilshire Boulevard in Los Angeles, California, and said defendant has had, and now has, a telephone listing at that address.

That the business done by said defendant in the State of California was, and is, a substantial part of its business, and because of the amount of business done in California, the said defendant regards California as one of its chief markets.

On about September 23, 1954, defendant Griesedieck Western Brewery Company informed plaintiffs that defendant Carling Brewing Company had offered to purchase the assets of Griesedieck Western Brewery Company. It stated that if this purchase was accomplished that there would be no change of any kind in the beer products that would be sold, and that plaintiffs would maintain the same relationship with defendant Carling Brewing Company as it had with defendant Griesedieck Western Brewery Company.

On September 23, 1954, plaintiffs were notified by defendant Griesedieck Western Brewery Company that defendant Carling Brewing Company had purchased the business and assets of Griesedieck Western Brewery Company.

After receipt of the notice of said sale as aforesaid, affiant telephoned to Edward D. Jones, Chairman of the Board of Directors of defendant Griesedieck Western Brewery Company.

dieck Western Brewery Company. Affiant asked Mr. Jones about the sale. Mr. Jones told affiant that there would be no change in the contract between his company and affiant and to keep right on selling beer as before. Mr. Jones further said, "I have you before me at all times" and that affiant's relationship with defendant Carling Brewing Company would be the same as it had been with his company. Mr. Jones said that he had sent a notice of said sale to all of defendant Griesedieck Western Brewery Company's large wholesale and retail accounts in California because he wanted affiant and the others to know about it and not to become concerned because of said sale and did not want them to get the information second handed from the Wall Street Journal.

On or about October 25, 1954, L. D. Ballew, General Sales Manager of defendant Carling Brewing Company, telephoned to affiant and told affiant that he would be in Los Angeles on October 28, 1954 to meet him and discuss business plans with affiant. The said Ballew confirmed this meeting by telegram on October 27, 1954, a copy of which is attached hereto as Exhibit 3.

On October 28, 1954, the said General Sales Manager of defendant Carling Brewing Company, met with plaintiffs and at that time told them that the said defendant Carling Brewing Company was not going to ship any more Hyde Park or Stag brand beers, which plaintiffs had been selling for the other defendant, to California or Arizona, and that his company would not ship the beer which had already

been ordered by plaintiffs. He then told plaintiffs that his company was terminating the contract with plaintiffs. Before telling them of the termination, he asked plaintiffs if they had any other means of livelihood. Plaintiffs told him they did not. That Reed LeVecke, one of the plaintiffs, asked the said Ballew if he did not think it highly unethical to cancel their contract on a minute's notice. Mr. Ballew said yes it was unethical, but that was the way it was going to be and that defendant Carling Brewing Company was taking over the California business. Mr. Reed LeVecke then told Mr. Ballew that he was stealing the business and terminating their contract without a gun.

The following day the said Ballew called on all of the customers that plaintiffs had been selling beer to in Los Angeles and told them that plaintiffs had been cancelled out and would receive no more Hyde Park or Stag Beer and that defendant Carling Brewing Company was taking over all such sales.

On or about September 27, 1954, defendant Carling Brewing Company wrote to plaintiffs and told them of its negotiations to purchase the assets of defendant Griesedieck Western Brewery Company and that if this was accomplished that there would be no changes of any kind and that the same relationship that plaintiffs had with defendant Griesedieck Western Brewery Company would be maintained with defendant Carling Brewing Company. A copy of this letter is attached hereto as Exhibit 1.

On or about October 29, 1954, defendant Griesedieck Western Brewery Company notified plain-

tiffs that the sale to defendant Carling Brewing Company had been consummated. A copy of said letter is attached hereto as Exhibit 2.

The plaintiffs' contract was terminated by said defendant Carling Brewing Company through its agents in California, and the acts and wrongs committed against plaintiffs by said defendants, of which plaintiffs complain, occurred in California.

/s/ WILLIAM LEVECKE

Subscribed and sworn to before me this 15th day of April, 1955.

[Seal] /s/ BELLE KENNICOTT

EXHIBIT No. 1

[Letterhead of Carling Brewing Company]

September 27, 1954

Dear Friend:

I know that Mr. Edward D. Jones has written to tell you of the negotiations now in progress between the Carling Brewing Company and the Griesedieck Western Brewery Company. My purpose in writing you at this time is to extend you a friendly welcoming hand, and to tell you something about the Carling Brewing Company. I hope that I shall have an opportunity to meet and greet you personally, but meanwhile I hope this will serve as an introduction to a cordial and lasting relationship between us.

You will agree, I am sure, that the success and security of a distributor depends largely upon the



ambition, resources and effectiveness of the brewery with which he is associated. It will be gratifying to you to review Carling's record, particularly in the past four years.

Between 1949 and 1953 the Carling Brewing Company has advanced from 64th position to 19th in the industry. This year we have completed a \$3,000,000 expansion program in our Cleveland plant, and have started the construction of a multi-million dollar plant in Natick, Massachusetts, that will be ready for production in 1956. The completion of our current negotiation with the Griesedieck Western Brewery Company would immediately place Carling's among the top ten brewing companies in this country.

You will be interested to learn that even this advanced position in American brewing does not tell the whole story of Carling's strength, for there are eminently successful Carling breweries in Canada and in England. Carling's is sold in many countries throughout the world.

My purpose in telling you all this is not to boast of past achievements, but to demonstrate to you that the company with which you will be affiliated has the resources, the experience and the record to support its ambitions.

I want also to confirm what Mr. Jones wrote you with regard to our plans insofar as they affect Stag Beer. No changes of any kind are contemplated. With your help we intend to intensify and revitalize the promotional, merchandising and adver-

tising effort in support of Stag Beer sales in your area.

If the shareholders of the Griesedieck Western Brewery Company accept the recommendation of the board, we shall be in contact with you as promptly as possible to plan our future strategy together.

In the meantime, please accept this cordial greeting, and my sincere hope that we may work together, happily and successfully for many years to come.

Sincerely yours,

/s/ Ian R. Dowie, President

EXHIBIT No. 2

[Letterhead of Griesedieck Western Brewery  
Company]

October 29, 1954

To Our Hyde Park "75" Distributors:

I am writing to advise you that the negotiations between this company and the Carling Brewing Company, about which I recently informed you, have now been consummated. Carling's will assume operation of our plants on Monday, November 1st.

Many of our distributors have already had an opportunity to meet Ian R. Dowie, President of Carling's, and I know they will agree with me when I tell you that Mr. Dowie and the organization he heads are friendly, dynamic and of highest integrity. I am confident that your relationship with Carlings will be both profitable and pleasurable.

I want to take this opportunity to thank you for



your loyalty and support. I hope that you will continue with Carling's in the same fine spirit. Your cooperation with them will be a personal favor to me and to every member of our organization.

I am retiring from brewing activities and will devote my time to my brokerage business, and, you can feel free to address me on any subject at any time in care of: Edward D. Jones & Company, 300 North 4th Street, St. Louis, Missouri.

With my sincere wish for your continued success, I am,

Cordially yours,

Griesdieck Western Brewery Co.

/s/ Edward D. Jones,

EDJ:ms

Chairman of the Board

EXHIBIT No. 3

LA022 CIB100 1954 Oct 27 AM 8 54  
CT.CLD098 Pd-Wux Cleveland Ohio 27 1105 Ame

William R LeVecke—LeVecke Co  
1807 East Olympic Blvd LosA—

I Have Reservations Confirmed At The Town House in Los Angeles For Thursday October 28 And Wish To Suggest That We Proceed From Airport To Town House For Dinner And General Business Discussion Please Wire Acknowledgment—

L D Ballew Carling Brewing Co.

Acknowledgment of Service attached.

[Endorsed]: Filed April 15, 1955.

[Title of District Court and Cause.]

AFFIDAVIT OF L. D. BALLEW

State of Ohio,

Cuyahoga County—ss:

L. D. Ballew, being first duly sworn on his oath says:

1. I reside in Sagamore Hills, Northfield, Summit County, Ohio. I am General Sales Manager of the Carling Brewing Company and I have held such position with said corporation since August 1949 including all times referred to in the complaint, and am presently General Sales Manager of said corporation. I have personal knowledge of the facts stated herein.

2. Answering the Affidavit filed herein sworn to by William Le Vecke I admit that on or about October 25, 1954 I telephoned to said William Le Vecke and advised him that I would be in Los Angeles on October 28, 1954. I further admit that the telegram attached to the said Affidavit to William Le Vecke and marked Exhibit 3 was sent to William Le Vecke by me.

3. Further answering the said Affidavit of said William Le Vecke, I admit that I did meet the said William Le Vecke and his son, Reed Le Vecke, in Los Angeles, California, on Thursday evening, October 28, 1954. I further state that the said Le Veckes met me upon arrival by airplane at the Los Angeles airport, drove me to my hotel, The Town House, in Los Angeles, that they were my guests at

dinner in my suite of rooms at the Town House; that during and following said dinner they, the said Le Veckes, explained to me the efforts they had made in the past on behalf of the products of Griesedieck Western Brewery Company, and of their desire to continue to sell the said products for Carling Brewing Company after said last named company, my employer, acquired the brewery properties of Griesedieck Western Brewery Company at St. Louis, Missouri, and Belleville, Illinois on November 1, 1954. [131]

4. Having heard fully the presentation by the said Le Veckes made by them at the aforesated Town House meeting including their request that the Carling Brewing Company continue to do business with them in connection with said Griesedieck Western Brewery Company products namely Stag Beer and Hyde Park Beer, I informed the said Le Veckes that the Carling Brewing Company had no present intention of continuing the sale of said Stag Beer and Hyde Park Beer in the western states of the United States including the States of California and Arizona. I further informed them that, in view of the foregoing, Carling Brewing Company would not after its acquisition of said brewery properties in St. Louis, Missouri, and Belleville, Illinois, and the right to manufacture therefrom or from any other plant of Carling Brewing Company the said Stag Beer and Hyde Park Beer have any business relationship with the said Le Veckes or either of them in any capacity whatsoever.

5. Further answering the said Affidavit of William Le Vecke, Affiant denies that he told said Le Veckes or either of them that Carling Brewing Company was terminating any contract with them, and Affiant says further that no contract ever existed by and between Carling Brewing Company and said Le Veckes or either of them. Further, this Affiant denies that he asked said Le Veckes if they had any other means of livelihood, but this Affiant says that the said Le Veckes did represent to him that the business which they had been engaged in and were then engaged in with regard to sales of Stag Beer and Hyde Park Beer was the only business they were then engaged in.

6. Further answering said Affidavit of William Le Vecke, this Affiant says that the Le Veckes complained to him bitterly at said meeting because they were not to be afforded the opportunity and right to sell said Stag Beer and Hyde Park Beer after said products and said brewing properties of Griesedieck Western Brewery Company had been acquired by Carling Brewing Company, but Affiant emphatically denies that anything was said at any time about the cancellation of any contract which they had or claimed to [132] have with Carling Brewing Company and Affiant repeats his former statement that there was no contract existing by and between the Le Veckes and Carling Brewing Company and that also as aforesaid Affiant made it perfectly clear to the Le Veckes that there would be no contract or any other business relationship with the Le Veckes by and between them and the Carling Brewing



Company on November 1, 1954 or at any other time. Further, Affiant denies that he made any statement to the effect or which could be interpreted as meaning that what he was saying to them was in any way unethical on the part of Carling Brewing Company or this Affiant. Also, this Affiant denies that Mr. Reed Le Vecke told him that he was stealing their business and terminating their contract without a gun.

7. During the several days this Affiant was in Los Angeles following the aforementioned Town House meeting with the said Le Veckes, he called upon several distributors some of whom were then handling the Carling Brewing Company products Carling's Red Cap Ale and Carling's Black Label Beer. One such distributor and one only, R. E. Spriggs, was to this Affiant's personal knowledge also a distributor of products of Griesedieck Western Brewery Company. Affiant says that he had informed said R. E. Spriggs that on and after November 1, 1954 upon which date the Griesedieck Western Brewery Company properties were to be acquired by Carling Brewing Company as aforesaid, the Carling Brewing Company was not then planning to continue the sale of either Stag Beer or Hyde Park Beer in the western states including the State of California. Affiant denies that he called on all of the customers of the said Le Veckes to whom they had been selling beer in Los Angeles and told said distributors that the Le Veckes had been "cancelled out" and would receive no more Hyde Park Beer or Stag Beer and that the Carling Brew-

ing Company was taking over all such sales. To reiterate the foregoing, only one distributor was called upon who in addition to handling Red Cap Ale and Black Label Beer also handled one or more of the products of Griesedieck Western Brewery Company and to him, namely the said R. E. Spriggs, the [133] statements were as stated above plus the clear explanation that William Le Vecke and Reed Le Vecke, nor neither of them, then represented nor would represent Carling Brewing Company in any capacity whatsoever or with regard to any products of Carling Brewing Company after November 1, 1954.

8. Affiant says that to his personal knowledge the letter dated September 27, 1954 attached to the said Affidavit of William Le Vecke as Exhibit 1 was sent over the signature of Ian R. Dowie, president of Carling Brewing Company, to certain distributors of the Griesedieck Western Brewery Company, but Affiant says he does not know whether a copy of said letter was sent to or received by the Le Veckes or either of them. However, Affiant says that at said Town House meeting with the Le Veckes reference was made by one or both of the Le Veckes to said letter. The Le Veckes commenting with regard thereof and indicating an expectation on their part that based upon the content of said letter, they had expected to be afforded the opportunity and right to sell Stag Beer and/or Hyde Park Beer in the States of California and Arizona in a business relationship with Carling Brewing Company. Affiant says that as stated above and without reser-





[Title of District Court and Cause.]

### AFFIDAVIT OF ARNOLD E. WACHTER

State of Missouri,  
City of St. Louis—ss.

Arnold E. Wachter, being first duly sworn, on his oath says:

1. I reside at 7405 Wellington Way, Clayton, Missouri. I am employed by the Cavanagh Printing Company of St. Louis, Missouri and was employed by that Company as a salesman in 1952 and prior thereto. I was in charge of the Griesedieck Western Brewery Company account and responsible for orders received from that company.

2. On August 20, 1952, in response to order from Griesedieck Western Brewery Company, the Cavanagh Printing Company mailed by parcel post to Mr. Reed LeVecke, The LeVecke Distributing Company, 1807 East Olympic Boulevard, Los Angeles, California, two thousand business cards. These cards were blank except that the Hyde Park "75" beer trade-mark was printed on one thousand of them and the Stag beer trade-mark was printed on the other one thousand. There was no other printing on the cards when they were mailed to The LeVecke Distributing Company. The blank business cards which are attached as Exhibits 1 and 2 to my affidavit are exact reproductions of the cards which were mailed to The LeVecke Distributing Company on August 20, 1952.

3. I have examined the business card which is

attached as part of Exhibit J to the affidavit of Reed LeVecke. None of the printing on said card, other than the colored trade-mark, was placed on said card by Cavanagh Printing Company.

4. I have personal knowledge of the fact that Cavanagh Printing Company printed large numbers of said blank business cards, with the Stag or Hyde Park trade-mark on them, for delivery in various parts of the country to distributors of beer manufactured by Griesedieck Western Brewery Company. In all such instances the business cards were blank except for the printed trade-mark.

/s/ ARNOLD E. WACHTER [137]

Subscribed and sworn to before me, a notary public in and for the City of St. Louis, State of Missouri, this 27th day of April, 1955.

[Seal] /s/ BETTY PROCTOR,  
Notary Public [138]

Acknowledgment of Service attached. [140]

[Endorsed]: Filed April 28, 1955.









[Title of District Court and Cause.]

AFFIDAVIT OF EDWARD D. JONES

State of Missouri,  
City of St. Louis—ss:

Edward D. Jones, being first duly sworn, on his oath says:

1. I reside at 6341 Ellenwood Avenue, St. Louis County, Missouri. I am President of The Griesedieck Company, formerly Griesedieck Western Brewery Company, and I have been the Chief Executive Officer of said corporation from 1944 to date and at all times referred to in the complaint. During said period I held the offices of President and Chairman of the Board of said corporation. I have read the affidavits of William R. LeVecke and Reed LeVecke, dated April 13, 1955, and I have examined the exhibits attached to said affidavits. I have personal knowledge of the facts which are stated herein in reply to said affidavits and exhibits.

2. With reference to the affidavit of William R. LeVecke, I did make the trips to California in October of 1951, 1952 and 1953 and in November of 1953, which are referred to on pages 2, 3, 4, 5 and 6 of said affidavit. Each of said trips was made at the request of Mr. William R. LeVecke and on his suggestion that such trips would benefit his business as an independent distributor of the beer produced by Griesedieck Western Brewery Company. I made the trips primarily for that purpose and because any increase in Mr. LeVecke's business in the State

of California would result in increased distribution of the products of Griesedieck Western Brewery Company.

3. The various business calls described in the affidavit of William R. LeVecke, on each of my trips to [142] California, were made at the request of Mr. LeVecke and as a means of promoting good will with his customers. During said visits I did not at any time make any sales of beer in California on behalf of Griesedieck Western Brewery Company nor did I solicit any orders for Griesedieck Western Brewery Company. In each instance, I did what I could to maintain and to enhance the business which Mr. LeVecke was doing with his customers upon whom we called.

4. I made only four such trips to California in the five-year period during which William R. LeVecke was a distributor of Hyde Park and Stag Beer. No other officer or employee of Griesedieck Western Brewery Company visited California for such purpose, other than the one instance in November, 1953, when Mr. Henry G. Sewing, Jr., Merchandising Manager of said company, accompanied me in response to the invitation of William R. LeVecke. The purpose of Mr. Sewing's visit was to acquaint him with the fine merchandising methods used by Mr. LeVecke, which I felt could be adopted by Griesedieck Western Brewery Company in its own sales efforts in Missouri and in Illinois. The affidavit of William R. LeVecke represents that the visits made by me to California, which are described therein, are "typical of the

sales efforts of said defendant in this state". (See affidavit of William R. LeVecke, page 2, lines 2-5). In fact, the visits described in said affidavit are the only trips which I or any other officer or employee of the Griesedieck Western Brewery Company ever made to California during said period on the business of said company.

5. Reference is made to the statement by William R. LeVecke that Griesedieck Western Brewery Company "regarded California as one of its chief markets" (see [143] affidavit of William R. LeVecke, page 6, lines 24-28). During the period 1950 to 1954 the volume of shipments by Griesedieck Western Brewery Company to California was less than one (1) per cent of the total sales of said company in each of said years.

6. I reaffirm as true and correct each statement made in my previous affidavit dated March 30, 1955 and on file in this cause. I deny, as untrue and incorrect, the numerous generalizations and conclusions contained in the said affidavits of William R. LeVecke and Reed LeVecke in regard to the relationship of The LeVecke Company to Griesedieck Western Brewery Company. I have limited this reply to the above statements because the said affidavits do not specify any particular fact, event or documents which support such generalizations and conclusions.

/s/ EDWARD D. JONES





24-28) the records of that company show that in each year from 1950 through 1954 the volume of beer shipped by Griesedieck Western Brewery Company into the State of California was less than 1% of the total sales of beer by said company in each of said years.

3. With reference to Exhibit L to the affidavit of William R. LeVecke and to the statement made by William R. LeVecke about said exhibit (see affidavit of William R. LeVecke, page 7, lines 1-7), I have examined the first letter appearing as part of Exhibit L, being the letter of February 17, 1954, written by Drexel Distributing Company to Mr. William R. LeVecke. That letter and the text of William R. LeVecke's affidavit referring to it are used to represent that Griesedieck Western Brewery Company had some dispute with Drexel Distributing Company over the Invoice No. 9040, described in said letter. I have no knowledge of any such dispute; the records of the company, under my supervision, do not disclose any such dispute; the records of the company do not contain any copy of the invoice referred to in [147] said letter or any correspondence relating to said invoice; the invoices used by Griesedieck Western Brewery Company for shipments in December 1953 did not include an invoice numbered 9040 and the serial numbers used by the company at that time did not have any No. 9040 in the numerical sequence which was followed. To the best of my information and belief, the invoice No. 9040 referred to in said letter appearing as part of Exhibit L to the affidavit of William R.

LeVecke was not an invoice of Griesedieck Western Brewery Company.

/s/ MELVIN B. FEIG

Subscribed and sworn to before me, a notary public in and for the City of St. Louis, State of Missouri, on this 28th day of April, 1955.

[Seal] /s/ BETTY PROCTOR,  
Notary Public [148]

Acknowledgment of Service attached. [149]

[Endorsed]: Filed April 29, 1955.

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[Title of District Court and Cause.]

### AFFIDAVIT OF HANS J. SAEMANN

State of Missouri,  
City of St. Louis—ss.

Hans J. Saemann, being first duly sworn, on his oath says:

1. I reside at 8609 Mayflower Court, St. Louis, Missouri. I was Assistant Advertising Manager of Griesedieck Western Brewery Company in August, 1952. I have personal knowledge of the facts stated herein.

2. I have examined Exhibit J to the affidavit of Reed LeVecke dated April 13, 1955. On or about August 4, 1952, I received a letter from Reed LeVecke of The LeVecke Distributing Company, requesting 2,000 business cards for Hyde Park and



Stag beer. That letter is attached as Exhibit 1 to this affidavit. On August 4, 1952, I wrote Reed LeVecke and a photostat of my letter is attached as part of Exhibit J to the said affidavit of Reed LeVecke. The business card which is attached to said Exhibit J is not a reproduction of the blank business cards referred to in my letter of August 4, 1952, as said cards appeared at the time they were sent to Reed LeVecke.

3. On or about August 4, 1952, I directed the Cavanagh Printing Company at St. Louis, Missouri, to forward to The LeVecke Distributing Company the blank business cards referred to in my letter. The business cards sent by the printing company in accordance with my direction, and in response to this request of Reed LeVecke, were blank except for the colored trade-marks of Stag beer and Hyde Park "75" which trade-marks were printed on the cards by Cavanagh [151] Printing Company. The cards thus sent to The LeVecke Distributing Company were exact copies of the business cards identified as Exhibits 1 and 2 to the affidavit of Arnold E. Wachter, dated April 27, 1955, which affidavit and exhibits I have examined.

4. Neither William R. LeVecke nor Reed J. LeVecke, nor The LeVecke Distributing Company, had authorization from Griesedieck Western Brewery Company to print the name of the said Griesedieck Western Brewery Company on the blank business cards which were forwarded to the LeVeckes. I had no knowledge that the name of Griesedieck Western Brewery Company had been added to these

cards by the LeVeckes until I saw Exhibit J to the affidavit of Reed LeVecke. It was customary for Griesedieck Western Brewery Company to supply distributors of its beer in various parts of the country with blank business cards containing the colored trade-mark for the beer, which card the particular distributor would complete by printing on it the appropriate name and other information relating to his independent company. The Griesedieck Western Brewery Company did not authorize the printing of its name on these blank business cards by The LeVecke Distributing Company or by any other of the independent distributors of its products.

/s/ HANS J. SAEMANN

Subscribed and sworn to before me, a notary public in and for the City of St. Louis, State of Missouri, this 28th day of April, 1955.

[Seal] /s/ BETTY PROCTOR,  
Notary Public [152]

EXHIBIT No. 1

[Letterhead of The LeVecke Distributing Co.]

Mr. Hans Saemann August 1, 1952  
Griesedieck Western Brewery Co.  
3607 North Florissant Ave.  
St. Louis 7, Missouri

Dear Hans:

Thank you for your letter of July 30th, stating that the truck decals are on the way.

Please send to us a 1000 each of Hyde Park and Stag blank business cards. We are all out, and must have some for our men in the field, so would appreciate them as soon as possible. Thanks very much.

Kindest regards.

Very truly yours,

THE LEVECKE CO.

/s/ REED J. LeVECKE

RJL:ms [153]

Acknowledgment of Service attached. [154]

[Endorsed]: Filed April 29, 1955.

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[Title of District Court and Cause.]

**AFFIDAVIT OF HENRY G. SEWING, JR.**

State of Missouri,  
City of St. Louis—ss.

Henry G. Sewing Jr., being first duly sworn, on his oath says:

1. I reside at 2970 Ridgeview Drive, St. Louis County, Missouri. I was the Merchandising Manager of the Griesedieck Western Brewery Company (now named The Griesedieck Company) from February, 1952, to November 1, 1954; I was the Sales Manager of the Hyde Park Division of Griesedieck Western Brewery Company from July 1, 1950, to February, 1952. I had supervision of all sales made by this company to the plaintiffs and to Drexel Dis-

tributing Company at all times referred to in the complaint. I have personal knowledge of the facts stated herein. I have read the affidavits of William R. LeVecke and Reed LeVecke dated April 13, 1955, and I have examined Exhibits A through L attached to said affidavits. This affidavit of mine is made in reply to said affidavits and exhibits.

2. I identify Exhibit G to the affidavit of Reed LeVecke as the form of sales delivery book used by Griesedieck Western Brewery Company in the City of St. Louis, Missouri. One or more copies of these sales delivery books were obtained from Griesedieck Western Brewery Company by William R. LeVecke or by Reed LeVecke at their request and upon their representation that they wanted to use said delivery book as a form to follow in preparing sales delivery books to be used by their company, The LeVecke Distributing Company, in the conduct of its business in California. Contrary to the statements appearing in the affidavit of Reed LeVecke, page 3, lines 12 to 19, Griesedieck Western Brewery Company did not at any time require the LeVeckes to make delivery of Hyde Park or Stag beer on delivery slips illustrated by said Exhibit G nor did it at any time authorize the LeVeckes or The LeVecke Distributing Company to use sales delivery [156] books printed in the name of Griesedieck Western Brewery Company.

3. Referring to Exhibit H to the affidavit of Reed LeVecke, and to the statements relating to said exhibit appearing on page 3, lines 20 to 24 of

said affidavit, Griesedieck Western Brewery Company did not use a form of "order confirmation" illustrated by said Exhibit H. Said form was not used by Griesedieck Western Brewery Company nor was the use of said form by the LeVeckes or by The LeVecke Distributing Company ever approved by Griesedieck Western Brewery Company. The first time I have ever seen such form was upon examining Exhibit H to the affidavit of Reed LeVecke. I have had my assistants make a thorough investigation of the files, forms, records and correspondence of the Griesedieck Western Brewery Company in this respect and there is nothing to show that Griesedieck Western Brewery Company ever had anything to do with the preparation or use of said Exhibit H by the LeVeckes or by The LeVecke Distributing Company. If said form were used by The LeVecke Distributing Company on "large sales" of beer by it in California, then such use by The LeVecke Distributing Company was for its own purposes and without the knowledge or approval of Griesedieck Western Brewery Company.

4. Referring to Exhibit I to the affidavit of Reed LeVecke and to his statements relating to said exhibit on pages 3-4, lines 25-32, I identify the letter-head and envelope as being representative of stationery used by Griesedieck Western Brewery Company. Cuts of the Hyde Park and Stag beer trademarks were supplied by Griesedieck Western Brewery Company to the LeVeckes and they were auth-



orized to use them on their own business letterhead, as illustrated by the letter from The LeVecke Company which is attached as Exhibit I to this affidavit. The company files contained a request from Reed LeVecke in February, 1954, for a Stag cut and for two hundred Hyde Park 75 and two hundred Stag envelopes. I had no knowledge of this [157] request, but upon questioning former clerical employees of Griesedieck Western Brewery Company I am informed that the materials were sent to the LeVeckes shortly after receipt of the request. I have no knowledge of any request by the LeVeckes for authority to use Griesedieck Western Brewery Company envelopes or letterheads as agents or employees of the Griesedieck Western Brewery Company and no authority was given to the LeVeckes or to The LeVecke Company to use said material in any manner which would represent that they were acting as agents or employees of said company.

5. With reference to the statements appearing on page 4 of the affidavit of Reed LeVecke, lines 8 to 13, the Griesedieck Western Brewery Company did not at any time cause its corporate name to be listed in any telephone directory in California; nor did the Griesedieck Western Brewery Company at any time have knowledge of said listing; nor did Griesedieck Western Brewery Company at any time authorize the LeVeckes or The LeVecke Distributing Company to list the corporate name of Griesedieck Western Brewery Company in any telephone directory. The Griesedieck Western Brewery Company



did not pay the cost of any such listing and if the listing was done, it occurred without the knowledge or consent of said company.

/s/ HENRY G. SEWING, JR.

Subscribed and sworn to before me, a Notary Public in and for the City of St. Louis, State of Missouri, this 30th day of April, 1955.

[Seal] /s/ HAMILTON GROSSE,  
Notary Public [158]

EXHIBIT No. 1

[Letterhead of The LeVecke Company]

Mr. Henry Sewing December 14, 1953  
Griesedieck Western Brewery Company  
3607 North Florissant  
Sain Louis 7, Missouri

Dear Henry,

This is to confirm our telephone conversation with you December 10th relative cancellation of our purchase order no. 224.

I will keep you advised.

Very truly yours,

/s/ REED,

/ms/ The LeVecke Company [159]

[Endorsed]: Filed May 2, 1955.

[Title of District Court and Cause.]

AFFIDAVIT OF WILLIAM LeVECKE IN ANSWER TO AFFIDAVIT OF HENRY G. SEWING, JR.

State of California,  
County of Los Angeles—ss.

William LeVecke, being first duly sworn, deposes and says:

He is one of the plaintiffs in the above entitled action and has read the affidavit of Henry G. Sewing, Jr., filed in said action, and to said affidavit he makes the following answer of matters of which he has personal knowledge.

The sales delivery books sent to plaintiffs by Griesedieck Western Brewery Company were not one or two in number, as affiant Sewing has stated, but were a whole carton of books. That affiant has used a number of these books, has given his attorneys sixteen of these books and he and the other plaintiff have eight of them still in their possession. These books were sent to plaintiffs by said defendant Brewery Company for use by plaintiffs in making delivery of Stag and Hyde Park beer and not merely as a form to use in preparing plaintiffs' own books. The defendant Griesedieck Western Brewery Company authorized and directed the plaintiffs to use said books printed in said defendant's name.

Exhibit "H" attached to the affidavit of Reed LeVecke is a form of Order Confirmation authorized and approved by defendant Griesedieck West-

ern Brewery Company. It is a form used by plaintiffs for several years. The plaintiffs used this form because many of the companies purchasing said beer of Griesedieck Western Brewery Company insisted on doing business directly with said Brewery Company and the said Brewery Company authorized plaintiffs to sign their name on said Order of Confirmation. When said purchasers ordered beer, plaintiffs would obtain the number of the freight car and the date of the shipment of the beer from defendant Griesedieck Western Brewery Company and notify the purchaser on said form, Order Confirmation form. That Edward Jones, President of said defendant Griesedieck Western Brewery Company approved the said form and the use and execution of the name of his company by the plaintiffs. The said defendant Brewery Company wanted said purchasers of their beer to know that they were giving the business entailed by said purchases to the Brewery Company and to no one else. When purchases of beer were made for the first time by a new purchaser, the defendant Griesedieck Western Brewery Company would write to the purchasers and thank them for the business that the purchaser had given them. Typical of these letters are the copies of some of them attached hereto as Exhibit "X." Thereafter the said Brewery Company would periodically write letters to such purchaser thanking them for their business during the year.

The letterheads and envelopes of defendant Griesedieck Western Brewery Company were sent to plaintiffs by said company for use by plaintiffs and

with authorization to plaintiffs to sign the said company's name. The said Brewery Company kept the plaintiffs supplied with said stationery and from time to time when their supply got low the said defendant would send more. Plaintiffs used said stationery in writing to the purchasers of said defendant's beer in California. This stationery was exactly the same as that in use by said defendant Brewery Company and was the same stationery that was used in writing to such California companies as Certified Grocers, Shopping Bag, A. J. Byless, United Grocers, Safeway Stores, all of the members of the co-operative grocery associations (being very numerous) and many other purchasers in which said defendant stated that the plaintiffs were their representatives. Typical of said letters are some copies attached hereto as Exhibit "Y."

That the said Henry J. Sewing, Jr., who states in his affidavit that he did not know about the use of said stationery, from time to time sent the said stationery to plaintiffs. In one telephone conversation with affiant the said Henry J. Sewing, Jr., in referring to his company, defendant Griesedieck Western Brewery Company, and authorizing the use of said stationery, said to affiant, "You are us on the Coast."

The telephone listing of the defendant Griesedieck Western Brewery Company in the Los Angeles, California, directories was authorized by Edward D. Jones, President of said defendant company. This listing was carried in this manner because the purchasers of said beers of defendant

company were told that the Griesedieck Western Brewery Company were on the Coast to stay by the President of said defendant (See Exhibit "B" referred to in affidavit of Reed LeVecke) and expected the said defendant to have an office here. That in addition, the President of defendant Brewery Company told affiant that since the name of the said company was on the beer containers, it would be necessary for plaintiffs to have the defendant's name listed in the telephone directory so that prospective purchasers of said beer would be able to contact the Brewery Company.

That in addition to the name of defendant Griesedieck Western Brewery Company being listed in the telephone directory in Los Angeles, California, it was placed on the door of plaintiffs' office with the approval of said affiant, Henry G. Sewing, Jr., and Edward Jones, the President of said Brewery Company. That the said affiant Sewing was in plaintiffs' office and remarked about how the name of the defendant Brewery Company was on said office door.

The defendant Griesedieck Western Brewery Company told all of the purchasers of its beer in California that it was "on the Pacific Coast to stay" and that it was "financially responsible to carry out" its "obligations" to these purchasers. (A typical copy of a letter to a purchaser is attached as Exhibit "Z.") This shows that the said defendant Brewery Company was definitely in business in California.

/s/ WILLIAM LeVECKE



Subscribed and sworn to before me this 4th day of May, 1955.

[Seal] /s/ BELLE KENNICOTT,  
Notary Public in and for the County of Los Angeles,  
State of California

EXHIBIT "X"

Mr. R. C. Holderness Oct. 21, 1952  
Secretary, Certified Grocers  
2601 South Eastern Ave.  
Los Angeles, Calif.

Dear Mr. Holderness:

I thought I would drop you a note and remind you to put me on the CoOperator's Mailing List. I have received occasional copies from our representative, Mr. William LeVecke, and I enjoy them very much and they are very educational.

We appreciate the nice business that your good firm has given us. We also appreciate the publicity plugs you give us occasionally in the CoOperator.

If there is anything I can do at this end of the line for you or for the CoOperator, please command me.

Very truly yours,

Griesedieck Western Brewery Company  
Edward D. Jones, President.

EDJ:ak

EXHIBIT "Y"

Listed below are the names of merchants that have purchased stores from Certified members, and attached is the letter that was sent to each:





phone: Vandyke 7944. If you are not handling our products, a telephone call to Mr. LeVecke will be an easy way to get acquainted with our profitable line for distribution in your neighborhood.

At any time that you are in St. Louis, I would be happy to have you call on us and inspect our facilities.

Very truly yours,

Griesedieck Western Brewery Company  
Edward D. Jones,  
Chairman of the Board

EDJ:bs

Mr. H. L. Sorensen May 6, 1954  
United Grocers, Ltd., 685 Sixth St., San Francisco

Dear Mr. Sorensen:

Our representative, Mr. Reed J. LeVecke, very kindly sent me a book of the "Ducks Unlimited" tickets, and I am most happy to participate in this activity. Enclosed find our check for \$10.00 in payment of one of the books.

I sincerely hope that this letter finds you in good health and in usual good spirits.

You may be sure that Mr. LeVecke and myself appreciate the fine business that you have given us.

Sincerely yours,

Griesedieck Western Brewery Company  
Edward D. Jones, Chairman of the Board

EDJ:bs—cc: Reed LeVecke

(Copy)

EXHIBIT "Z"

Mr. Henry Reidt, Manager

Oct. 21, 1952

United Grocers

685 Sixth Street, San Francisco, Calif.

Dear Mr. Reidt:

It was a pleasure to meet you and Mr. Sorensen a few days ago, and we are most happy with our association with your good firm.

I should like to emphasize that we are on the Pacific Coast to stay, and as revealed in our financial statement that I gave to your Mr. Sorensen, you will believe me when I say that we are financially responsible to carry out our obligations to you and your dealers.

If you have any ideas as to how we may make our association more profitable, and if you can suggest how it will function more smoothly, please command me.

With warmest regards,

Very truly yours,

Griesedieck Western Brewery Company

Edward D. Jones,

President

EDJ:ak

Acknowledgment of Service attached.

[Endorsed]: Filed May 5, 1955.

[Title of District Court and Cause.]

### MINUTES OF THE COURT

Date: May 6, 1955. At: Los Angeles, Calif.

Present: Hon. Leon R. Yankwich, District Judge;  
Deputy Clerk: John A. Childress; Reporter: none;  
Counsel for Plaintiff, no appearance; Counsel for  
Defendant, no appearance.

Proceedings: It Is Ordered that the motion of  
defendant Griesedieck Western Brewery Co., filed  
April 4, 1955, and the motion of defendant Carling  
Brewing Co., filed April 11, 1955, heretofore argued  
and submitted are decided as follows: the motion  
of each defendant to dismiss the complaint is de-  
nied, and the motion of each defendant to quash  
service of summons and complaint is granted.

EDMUND L. SMITH,

Clerk [160]

[Title of District Court and Cause.]

### MINUTES OF THE COURT

Date: May 12, 1955. At: Los Angeles, Calif.

Present: Hon. Leon R. Yankwich, District Judge;  
Deputy Clerk: John A. Childress; Reporter: none;  
Counsel for Plaintiffs: no appearance; Counsel for  
Defendants: no appearance.

Proceedings: It is ordered that petition for re-  
hearing, heretofore lodged, be, and it is filed, and  
is denied on the following grounds:

(1) The Federal Rules of Civil Procedure do not

provide for a petition to rehear a motion to quash, and

(2) On the merits, the petition is not well taken. The Court in determining the motion to quash considered the question of solicitation as raised by the affidavits, including the reply affidavit filed by plaintiff after the hearing, by leave of Court, and the additional memorandum filed by the plaintiff, without leave of Court. The memorandum called the Court's attention to the latest decisions of the California Courts on the subject of "solicitation as doing business."

(3) The request to set the matter for further hearing is also denied.

EDMUND L. SMITH,

Clerk.

[161]

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[Title of District Court and Cause.]

PETITION FOR REHEARING ON MOTION  
TO QUASH SERVICE OF SUMMONS AND  
COMPLAINT

To the United States District Court, Southern  
District of California, Central Division:

Come now the plaintiffs in the above entitled action and petition the above entitled court, Honorable Leon R. Yankwich, Judge, to grant a rehearing on the motion to quash service of summons and complaint in the above entitled action, which

motion was heretofore granted on the 6th day of May, 1955.

Said petition is based on the ground that the defendants were soliciting business in the State of California and that in the State of California the latest cases hold that the "mere solicitation of business" constitutes "doing business" in this State.

That plaintiffs pray that the court set a date for oral [162] argument so that petitioners can present all of their cases to show that defendants were doing business in the State of California and are amenable to process issued out of the courts of this State.

Dated this 11th day of May, 1955.

WILLIAM LeVECKE,  
Petitioner.

THOMAS A. WOOD  
LARWILL AND WOLFE

By /s/ CHARLES W. WOLFE  
Attorneys for Petitioner.

[163]

Duly Verified. [164]

[Endorsed]: Filed May 12, 1955.



In the United States District Court, Southern  
District of California, Central Division

No. 18034 Y

WILLIAM LeVECKE and REED LeVECKE,  
doing business as The LeVecke Company,  
Plaintiffs,

vs.

GRIESEDIECK WESTERN BREWERY CO.,  
a corporation, and CARLING BREWING  
CO., a corporation, Defendants.

ORDER GRANTING THE MOTION OF THE  
DEFENDANT THE GRIESEDIECK COM-  
PANY AND THE DEFENDANT CARLING  
BREWING COMPANY INCORPORATED  
TO SET ASIDE, VACATE, AND QUASH  
SERVICE OF SUMMONS AND COM-  
PLAINT

The defendants having appeared herein specially and for the purpose of making a motion to set aside, vacate, and quash service of summons and complaint upon the ground that this Court lacked jurisdiction over the person of said defendants and each of them and upon the further ground that the service of process was and is insufficient and the defendants without in any manner intending to submit themselves to the jurisdiction of the Court as parties to the above entitled cause having served and filed their notice of motion and motion to set

aside, vacate, and quash service of summons and complaint and notice of motion and motion to dismiss and their affidavits and memorandum of points and authorities in support thereof, and the [165] plaintiffs having filed their responsive affidavits and memorandum of points and authorities, and the motion regularly having come on for hearing before the Honorable Leon R. Yankwich, Judge of the above named Court, in the Federal Building, at Los Angeles, on May 2, 1955, and the plaintiffs having then appeared by Messrs. Larwill & Wolfe, and Charles W. Wolfe, Esquire, and Thomas A. Wood, Esquire, and the defendant The Griesedieck Company having then appeared by Messrs. Shepard, Mullin, Richter & Balthis, and Cameron W. Cecil, Esquire, its attorneys, and the defendant Carling Brewing Company Incorporated having then appeared by John Ladd Dean, Esquire, and Messrs. Sheppard, Mullin, Richter & Balthis, and Cameron W. Cecil, Esquire, its attorneys, and the Court having found from the affidavits and the papers on file in the cause that each of said defendants is and at all times mentioned in the complaint was a foreign corporation; that the service of summons and complaint in this cause was sought to be effected upon The Griesedieck Company by serving the Secretary of State of the State of California and the service of summons and complaint in this case was sought to be effected upon Carling Brewing Company Incorporated by serving K. W. Burrie, the west coast regional representative of the Carling Brewing Company Incor-

porated; that the defendant The Griesedieck Company was at no time doing business within the State of California and that any shipments of beer made by The Griesedieck Company to California were made in interstate commerce, and that on November 1, 1954, said defendant The Griesedieck Company sold and transferred to the Carling Brewing Company Incorporated all of its brewing assets, equipment, real estate, plants, and inventory and that said defendant The Griesedieck Company has not engaged in the brewing business at any time thereafter; that the defendant The Griesedieck Company was not doing any business in California at the time the complaint was filed or at the time the summons was issued or at [166] the time of the attempted service of summons or at the time of the hearing of said defendant The Griesedieck Company's motion to set aside, vacate, and quash service of summons and complaint; that the defendant Carling Brewing Company Incorporated was at no time doing business within the State of California and that any shipments of beer made by Carling Brewing Company Incorporated to California were made in interstate commerce; and that the cause of action sued upon by the plaintiffs against the defendant Carling Brewing Company Incorporated did not bear and does not now bear any relationship to any transactions of said defendant Carling Brewing Company Incorporated in California; and the Court having granted the defendants' motions to set aside, vacate, and quash service of summons and complaint for lack of jurisdiction over the per-

sons of each of said defendants and for insufficiency of service of process;

Now, therefore, it is hereby ordered, adjudged, and decreed that the motion of the defendant The Griesdieck Company and the motion of the defendant Carling Brewing Company Incorporated to dismiss the complaint is denied and the motion of the defendant The Griesdieck Company and the motion of the defendant Carling Brewing Company Incorporated to set aside, vacate, and quash service of summons and complaint are and each of said motions is hereby granted because of lack of jurisdiction of the Court over the person of each of said defendants and because of insufficiency of service of process upon each of said defendants. Costs taxed in favor of defendants in amount of \$37.50 pursuant order filed May 23, 1955.

Dated at Los Angeles, California, May 12, 1955.

/s/ LEON R. YANKWICH,

Judge.

[167]

Acknowledgment of Service attached. [168]

[Endorsed]: Filed May 12, 1955. Docketed and entered May 13, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the above entitled Court:

Notice is hereby given that William R. LeVecke and Reed LeVecke, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order Granting the Motion to Quash Service of Summons and Complaint entered in this action on the 13th day of May, 1955.

Dated: May 19, 1955.

THOMAS A. WOOD

LARWILL AND WOLFE

/s/ By CHARLES W. WOLFE,

Attorneys for Appellants

William R. LeVecke and

Reed LeVecke. [169]

Acknowledgment of Service attached. [170]

[Endorsed]: Filed May 25, 1955.

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[Title of District Court and Cause.]

CERTIFICATE OF THE CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 181, inclusive, contain the original



Petition for Removal;

Copy of all Processes, Pleadings & Orders Served upon the Griesedieck Co.;

Notice of Motion & Motion to Set Aside, Vacate, and Quash Service of Summons & Complaint & Notice of Motion & Motion to Dismiss; (by Griesedieck)

Notice of Motion & Motion to set Aside, Vacate, and Quash Service of Summons and Complaint and Notice of Motion and Motion to Dismiss (by Carl-  
ing)

Memorandum of Points and Authorities in Support of Motion;

Affidavit of William R. LeVecke in Opposition to Motion;

Affidavit of Reed LeVecke in Opposition to Motion;

Affidavit of L. D. Ballew in Support of Motion;

Affidavit of Arnold E. Wachter;

Affidavit of Edward D. Jones;

Affidavit of Melvin B. Feig;

Affidavit of Hans J. Saemann;

Affidavit of Henry G. Sewing, Jr.;

Petition for Rehearing on Motion to Quash;

Order Granting the Motion of defendants to Set Aside, etc.;

Notice of Appeal;

Designation of Record on Appeal;

Supplemental Designation of Record on Appeal;



Designation by Defts of Additional Portions of Record;

which, together with a full true copy of the Minutes of the Court had on May 6, 1955 and May 12, 1955; and exhibits; all in said cause,

constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 12th day of July, 1955.

[Seal] JOHN A. CHILDRESS,  
Clerk.

/s/ By CHARLES F. JONES,  
Deputy.

In the United States District Court, Southern District of California, Central Division

No. 18,034-Y—Civil

WILLIAM LeVECKE and REED LeVECKE, doing business as THE LeVECKE COMPANY,  
Plaintiffs,

vs.

GRIESEDIECK WESTERN BREWERY CO., a corporation, and CARLING BREWING CO., a corporation,  
Defendants.

### TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Monday, May 2, 1955

Honorable Leon R. Yankwich, Judge presiding.

Appearances: For the Plaintiffs: Thomas A. Wood, Esq., and Larwill & Wolfe, by Charles W. Wolfe, 1017 Citizens National Bank Bldg., Los Angeles 13, California. For the Defendants: John Ladd Dean, Esq., and Sheppard, Mullin, Richter & Balthis, by Cameron W. Cecil, Esq., 458 South Spring St., Los Angeles 13, California.

Los Angeles, Calif., Monday, May 2, 1955. 10 a.m.

(Other cases called.)

The Court: I will hear this other matter, then.

The Clerk: 18,034-Y, LeVecke vs. Griesedieck Western Brewery Co., et al.

Mr. Cecil: If the Court please, preliminarily let me state and make a request of the court:

Mr. John Ladd Dean is here from Cleveland. He is a member of the Supreme Court of Ohio, and also I understand admitted to the Supreme Court of the United States. I would like to move his admission for this case only.

The Court: We will extend to him the usual courtesy of admitting him for the particular case.

Mr. Dean: Thank you, your Honor.

Mr. Cecil: Thank you, your Honor. I will present the motion then on behalf of the Griesedieck Company, your Honor, and Mr. Dean will present it on behalf of the Carling Company.

This case falls I think, if the court please, so far as the Griesedieck Company is concerned, squarely within the Martin Bros. Electric Company case, appearing in 121 Cal. App. (2d) 790.

This is a case in which the LeVeckes acted as distributors, and only as distributors for the Griesedieck Western Brewery Company.

There are voluminous affidavits and voluminous exhibits in here, but when all of the affidavits and all of the exhibits are stripped to their essentials, it is quite apparent that there is nothing here, so far as the Griesedieck Company is concerned, other than a distributorship.

We submit, if the court please, that under both the Martin Bros. Electric Company case and all of the other California cases which are concerned with service of process, a motion to quash has always been granted where there is no basis of service other than that the company "is doing business," where its only connection with the State has been

that it was distributing its products which were shipped into the State in interstate commerce, and distributed through an independent distributorship.

We submit, if the court please, that while Exhibit J of the affidavits of the LeVeckes show and purport to show a business card which has the name William R. LeVecke, and at the bottom of it on the left hand side the "Griesedieck Western Brewery Co.," that that card is not completely accurate; that that card was not sent out by the Griesedieck Company; that the card with only the "Hyde Park '75'" trademark at the top left hand side was sent out, and the cards were sent in blank; that the use of the Griesedieck name on it was neither known, authorized, nor permitted by the Griesedieck Company, and that there was no representation that Mr. LeVecke was the Griesedieck Company in California, so far as has been known to that company.

There is also considerable discussion of these books which showed, "Griesedieck Western Brewery Co.," and which it is claimed by the LeVeckes were required to be used by them for the Griesedieck Company in California.

We submit that the books, on the face of the books themselves, show that that could not be so. There is on the third line of that not a place for the California liquor license number, but the Missouri liquor license number. These books were sent out merely for the purpose of being used as a form, which the distributor here could use if he wanted to use it, and not to use if he did not want to use it.

There is also some contention made that the east-

ern company determined the prices. We submit that under Exhibit K of the LeVecke exhibits themselves, this is shown not to be so.

Mr. Jones of the Drexel Company, which was a company which was buying Griesedieck beer out here from the LeVeckes, sent a telegram, in which he said:

“We have been selling Stag in Fresno at 15 cents, 6/90 cents. Do you want us to raise to 17 cents, 6/99 cents?”

In other words, even by the affidavit of the LeVeckes themselves, the distributors were not looking to the Griesedieck Company to fix prices. They were looking to the LeVeckes, the distributor here on the coast, to fix the prices, which was done.

In addition, if the court please, one further thing: The rest of the exhibits, or, as a matter of fact, most of the rest of the exhibits and affidavits filed by the LeVeckes are based upon the contention that Mr. Jones of the Griesedieck Company came to California and solicited business in California, did a continuous solicitation, and there is an inference left that maybe he was one of many employees. As a matter of fact, he was the only one, with the exception of one man who came with him at one time.

The Court: I presume that the solicitation of business point goes back to the West Publishing Company case.

Mr. Cecil: Well, I don't know what the plaintiff-respondents' contentions are in that regard, your Honor. It is our contention that there is no solici-



tation here at all by the Griesedieck Company, that Mr. Jones——

The Court: I have had many of these cases, and I have found that on the whole each case presents facts that are unique, and that a lot of the general language contained in various opinions must be applied cautiously. Of course, that depends also on the nature of the action.

One of the most recent cases which went to the Ninth Circuit was a case in which damages were sought to be recovered because of an inherent defect in a wood-turning machine. I tried the case without a jury and rendered a judgment against the parent company, and the case was sent back with the direction to take additional testimony on the problem of agency.

I had held that because the catalogs of the parent company represented the California concern as the agent that they could be sued, and ultimately the case was affirmed on both grounds.

Here the question does not relate to the sale of any product,—I mean the sale of any machinery. It is not a tort. It is merely a straight breach of contract case, and, therefore, the question before the court is whether the showing is sufficient from which to draw an inference that they were doing business here through him, and, of course, the relationship, the manner of solicitation, if any, and the manner of clearance becomes important.

In other words, I am pointing to the fact that ultimately we have to decide this according to California law, as to whether the company is doing



business here. This is a diversity case, and, therefore, as the Supreme Court has said, we merely sit as another Superior Court of the State, and we have to apply the particular rules which they have applied.

I will hear from the other side, and see upon what line of cases they rely. Or do you want the other counsel to present his position, too, and then you argue them both at the same time?

Mr. Wolfe: That probably would be better in this case, your Honor.

The Court: All right. We would probably gain time.

Mr. Cecil: Your Honor please, before you go to the Carling matter, I have an affidavit,—

The Court: An additional affidavit?

Mr. Cecil: An additional affidavit. I recognize that this does not comply with the Court's rules, because it was not served two days before the hearing. It was delivered to counsel this morning. The reason for that was that it was not delivered from the East to my office until this morning.

The Court: On a matter of this character, I will waive the technicality, of course, with the understanding that if counsel at the conclusion of the argument desires to have time to file a counter-affidavit, he may do so.

Mr. Cecil: I understand that, your Honor, and I apologize for its being here this late, but it was a matter which I could not help.

The Court: All right. It may be filed, and if

counsel feels he wants time to study it more carefully, and to reply to it, he may do that.

Mr. Cecil: May the record show that a copy has already been served?

The Court: All right.

Mr. Dean: If your Honor please, I very much appreciate the courtesy of being able to appear in your court, but just to correct the record, Mr. Cecil identified me and qualified me as having been admitted in the United States Supreme Court, as well as in the Ohio courts. While I have been admitted and have practiced in a number of the Federal and Circuit courts, I have not as yet been admitted to the Supreme Court.

The Court: That is all right. We extend the courtesy to practitioners of other states who appear here.

Mr. Dean: I very much appreciate that, your Honor.

The Court: Of course, I have come in close contact with some of the other judges, particularly Judge Kloeb of Cleveland.

Mr. Dean: Oh, yes.

The Court: Judge Kloeb and I are on an anti-trust committee, and we meet and get together about every two years.

Mr. Dean: Yes.

The Court: I will hear from you, sir.

Mr. Dean: Now, your Honor, I just want to speak very briefly with respect to the situation which obtains with regard to the second defendant, the Carling Brewing Company, which is quite dif-

ferent, I believe, from that of the other defendant, The Griesedieck Company, formerly the Griesedieck Western Brewery Co.

The Carling Brewing Company is a corporation of Virginia, and this is a diversity case, which accounts for the removal.

As your Honor has pointed out, we have submitted these affidavits, which I know full well you do not care to have me review in detail, because I know you have read them, or will, and we submit that, as evidenced by those affidavits, the defendant, Carling Brewing Company, has been engaged solely in interstate business.

One point really that I wanted to emphasize briefly, and I too have read these affidavits which have been filed pertaining to the Griesedieck motion, and recognize the conflicts on each of the points, but, if your Honor please, we submit on behalf of Carling that none of these things have any bearing upon the cause of action that is asserted here, nor has any of the activity of the Carling Brewing Company in the State of California any bearing upon it.

The situation is this: As your Honor has observed from reading these papers, as of November 1st of last year the Carling Brewing Company acquired the assets of The Griesedieck Company, with which concern the plaintiff had a connection, the details of which and the business activities of which other corporation, The Griesedieck Company, is the subject of their motion.

The contention is made in the petition and on the

present motion brought to the court's attention that during the negotiations a letter was sent to the then dealers of The Griesedieck Company, stating that these negotiations and proceedings were taking place, which indicated a closing that would transfer all of the brewery assets of The Griesedieck Company to the Carling Company, and that the Carling Company had no intention to make any changes in the lines of malt beverage products which The Griesedieck Company made during the time of its operations in St. Louis, Missouri, and in Belleville, Illinois.

There is also attached an exhibit to a second affidavit filed in this case, and signed by Mr. LeVecke, Sr., signed by the president of the Carling Brewing Company, confirming that which the president of The Griesedieck Company had said in a letter to his dealers, that the Carling Company was concluding this arrangement, whereby it would acquire the assets, and that it had no intention of making any changes in the Griesedieck line.

Now, the Carling Company, indicated by a separate affidavit filed by the general sales manager in answer to that particular LeVecke affidavit, had not made any changes in the Stag line, but it has not sold any of those products—I mean by “those products,” the products of the Griesedieck Western Company, and it was Stag beer, and it was Hyde Park beer—anywhere in the western states from the time that the actual consummation of the purchase and sale transaction was made, namely, on November 1, 1954.

The Court: Let me ask you this question, sir: Wouldn't the problem there as to them be this, assuming that from the time of the transfer of assets, they discontinued any activity, wouldn't they necessarily be tied to the—what is it?—The Griesedieck Company?

Mr. Dean: The Griesedieck Company, that is correct, sir.

The Court: Wouldn't they be tied if through the acquisition of assets they also assumed the contracts of The Griesedieck Company?

Mr. Dean: Assuming that there was a contract.

The Court: I mean the Griesedieck Company. That is right, assuming that there was a contract.

Mr. Dean: Yes.

The Court: In other words, the discontinuance of the business might put them in a different class if they did not take over the contract. There is such a thing as a person taking over only the physical assets.

Mr. Dean: Yes.

The Court: We had an illustration here in the newspaper world, where the Los Angeles Times bought the good will and the name of an afternoon newspaper, but did not assume any of the obligations or liabilities of the parties, so that they remained a separate entity, and, of course, that is possible in any kind of a transaction.

Mr. Dean: I appreciate what your Honor says, and, of course, it does go to the merits of any possible claim that might be made against the Carling Company as to the essence of the transaction itself,



which I know it would not be orderly for me to make any comments about here, but the point I was trying to make was that so far as the cause which is asserted here against The Griesedieck Company and against the Carling Company, as a secondary defendant, and this is shown by the affidavit of Mr. LeVecke, Sr., which was filed subsequent to their first papers, that prior to November 1st it was made perfectly clear, as they say in their affidavit—and your Honor has read that affidavit, I believe, of William LeVecke, Sr.—that the general sales manager made it perfectly clear to him that there was no relationship and would be no relationship, so far as a business with the plaintiff in this case, by and between the Carling Company and the plaintiff.

Now, those things which the Carling Company did do in California by its regional representation here all related to the product which it has sold for some time here, and which it continues to sell, the Carling Red Cap Ale and Carling Black Label Beer.

Admittedly by the action which has been filed and removed to this court, those products and that activity has no bearing whatsoever upon the present cause of action, which is solely concerned with Stag.

Now, I believe that under those circumstances your law here is—always recognizing, as your Honor has said, that each one of these cases must be examined upon its particular facts—but the general rule is that if the activity which has taken place in the jurisdiction, and in this instance it has been all interstate, but measuring it by these vari-



ous tests that have been reviewed so much in recent years, if that activity does not give rise to the liabilities which are sued for, it is not sufficient to subject that defendant to the jurisdiction of the court; and that is the position that we believe, as is rather clearly evidenced by the affidavits which have been filed here, the Carling Brewing Company is in.

I could elaborate by a review of these affidavits that it has been very strictly an interstate business, and there has been no delivery from warehouses on orders that were confirmed in this State. Well, I covered all of those points rather carefully in the affidavits which we presented to you.

The Court: That is one of the elements I referred to. The West Publishing Company case, involving the very well known publishing company at St. Paul,—

Mr. Dean: Yes, I know the case.

The Court: —is a leading case. There were earlier cases, going back to the Simmons Saw Company, and others,—in fact, I have a complete list of them—

Mr. Dean: Yes.

The Court: . But in the West Publishing Company case the court held that where there was control of activities, solicitation, and the like, and the man had control over the entire state, so his commissions amounted to a great deal of money, and I think he was getting about \$40,000 a year at that time, which was a lot of money in those days merely for a book salesman. It made you wonder why you did not go into that business, selling law books,

rather than the practice of law, or especially a judge. Incidentally, I have always considered that was a departure from what the law had been before, and that the court really repudiated the earlier cases, but did it in the way they like to do it, by trying to distinguish them, because under the old cases, like the Simmons Saw case, different criteria were applied than were applied in the West Publishing Company case.

Mr. Dean: I know your Honor is also familiar with the International Shoe Company case, and it was to the rule laid down there that I was giving emphasis, that the activities must also be those which give rise to the liabilities sued upon.

The Court: That is right. I have here a list of all the cases on doing business, including the two decisions by two of our own judges, Judge Hall's decision in Farr Company vs. Gratiot.

Mr. Dean: And Dunn vs. Cedar Rapids Engineering Company?

The Court: Yes. And then there is Judge Carter's decision in Perkins vs. Louisville & Nashville Railroad Company.

Mr. Dean: Yes. Then a case I think is of some real significance so far as the Carling Company as a defendant here is concerned is Perkins vs. Benquet Consolidated Mining Company, a 1952 case.

The Court: The latest California case that I have got marked here is Thew Shovel Company vs. Superior Court, or one of the latest, which is in 35 Cal. App. (2d) 183. The Simmons case is an old case, way back in 2 Cal. App. That is pretty old.

The West Publishing Company case is, of course, a Supreme Court decision and is in 20 Cal. (2d) 720, and it is a more elaborate expression.

Mr. Dean: Then Martin Bros. Electric Co. vs. Superior Court,—did your Honor take note of that case, wherein we have quoted in our memorandum the general tests, which there are well stated, and where the court said:

“Not ‘any activity’ of a foreign corporation in the state will make it amenable to process and there is no precise test that can be applied in all cases. It ‘is the combination of local activities conducted by such foreign corporation—their manner, extent and character—which becomes determinative of the jurisdictional question.’”

The Court: That is right.

Mr. Dean: Now, we may suffer from the fact that there are two defendants here against which the claim is made, and somewhat different jurisdictional points are taken.

While we contend that the very limited activity we have in the state is of such interstate character that we should not be subject to the jurisdiction, we place added emphasis upon this, your Honor, that the relationship of Carling to this whole Complaint of the plaintiff is that of a stranger, and that before there was any acquisition at all the relationship was made completely clear to them, and there was no basis for a grievance on that ground at all, but that whatever activities we had were not such that we should be within the jurisdiction in this particular case.

The Court: All right. I will hear from the other side.

The Clerk: Mr. Charles Wolfe for the plaintiff.

Mr. Wolfe: If the court please, at the outset I might state that the court has already referred to some of the leading California cases on the question of whether or not a foreign corporation is doing business in the State of California, and the case that your Honor cited, the Thew Shovel Company case, is typical of the recent decisions in the State of California on that particular point.

In the Thew Shovel Company case it was stated that the essential thing is merely whether the corporations are present within the state, whether they operate through an independent contractor, agent, employee, or in any other manner, and in the cases that we cited under our points and authorities we pointed out that if the representation which the foreign corporation maintains in the state gives it substantially the same benefits it would enjoy by operating through its own office or paid sales forces, it is doing business in the state, and it is amenable to process. And under that particular point we cited the late cases, including the Jeter vs. Austin Trailer Equipment Company case of 1953, the Iowa Manufacturing Company case of 1952, the Fielding vs. Superior Court case of 1952, and they all state that if a foreign corporation is receiving the same benefits in this state, and through operation in this state, no matter how they operate, whether it is through their own sales force or not, that they are in effect doing business in this state.



Now, Mr. Dean stated in his affidavit, I believe, or in one of his affidavits, that the Carling Company has an office in this State, had an office here at all times, had a sales force I believe of six men and a supervisor, and he states that the business which the office force in this State was doing was interstate business.

However, we have shown, I think, by affidavits that they took over this Griesedieck Company, that they wrote letters out here to the various people who were representing the Griesedieck people in the sale of the beers, the two brands of beer, and, among other things, they stated in this letter to these various individuals that, in the meantime, "Please accept this cordial greeting and my sincere hope"—this is from the president of the company—"that we may work together happily and successfully for many years to come."

This was a letter which followed a letter from The Griesedieck Company. The Griesedieck letter, from the president of the company, told the LeVeckes that the business or the assets were to be taken over by the Carling Company, but to continue to sell the beer because they were going to be incorporated right in the Carling setup.

Then the Carling letter follows immediately, and it starts out:

"I know that Mr. Edward D. Jones has written to tell you of our negotiations now in progress."

In other words, they follow up with another letter stating that Mr. Jones of Griesedieck "has already informed you, and we want to confirm that, we want

you to sell our beer, and to continue to sell it, and we hope we can continue to work happily together for many, many years to come.”

The Court: That would not be the assumption of a contract.

Mr. Wolfe: No.

The Court: That would not be the assumption of a contract. In other words, the law would require much more before you could say that in this manner you assumed a contract existing in favor of the person to whom this letter was written, or whether it was oral or written.

Mr. Wolfe: Yes, we would expect to prove that. But they are here merely stating that they were doing business in an interstate manner, that is, interstate business, even though they had their offices here in this State. Now, we also showed how Carling——

The Court: Of course, I think this, the mere business of having an office in the State does not mean very much.

Mr. Wolfe: No.

The Court: It all depends on what they do. After all, they may have an office as just a sort of a clearing house, and if the price is set in the foreign state and if the payments are made through that state, and all that the agent does is to solicit orders, after which he loses control, and payments are made in that way, the mere fact that they may even keep an office for him under the other company name has been held to be not sufficient.

Mr. Wolfe: Yes, that is true, but the fact that



they are obtaining the same benefits through other agents, as heretofore,—

The Court: That dictum I am familiar with. The Supreme Court has never used that test,—the Supreme Court of California. The West Publishing Company case does not use that test, and if that were the sole test, then there would be no such thing. Any corporation that would send a man into the state to pick up any kind of business would be included.

For instance, let's take an illustration which is familiar to all. I became very familiar with it because I had a very important case involving them many years ago. That is Brooks Bros. So let's take Brooks Bros. of New York.

Now, with Brooks Bros. of New York, if you have watched their advertisements in New York, and we will leave out California here, because they have an agency here, and so forth, but take in any other places like Los Angeles. They are a New York corporation, and they give notice—I have read them myself in the New York Times and in the Los Angeles Times—announcing that their representative would be at certain places, like Pasadena, or Monrovia, where people who would like their certain type of clothes could know they would be there.

Now, if that is true, and I am using them because they resort to that type of advertising, and if that principle you mentioned is enough, then Brooks Bros. of New York would be doing business in California, and I do not think there would be any

justification for that assumption, because, as you say, they have benefits, and if you use that criterion, then, of course, if they had a business of their own, they might make more money, and they would get the same benefits. So the mere presence of a salesman in the State would put them here for all purposes, and I don't think that that criterion in itself is sufficient.

Mr. Wolfe: No.

The Court: Because if you apply that, as I say, then any kind of solicitation for business in the State would be called "doing business," and that is not the rule.

Mr. Wolfe: No. If the court please, the cases that I mentioned, the four very late cases, have used this language, and these are the four cases, *Jeter vs. Austin Trailer*,—and they are all set forth in our points and authorities—the *Iowa Manufacturing Company* case, the *Fielding Company* case, and the *Sales Affiliates* case, and they state in each of those cases that if the representation which a foreign corporation maintains in this State gives it substantially the same benefits it would enjoy by operating through its own office or paid sales force, it is doing business in this State and is amenable to process.

Now, what I wanted to point out to the court was that these two corporations were enjoying the same business and the same benefits by operating through their agents in this State as they would have if they had moved their entire office out to this State.

The Court: But you want to bear this in mind

also, that, just as in the law of partnerships, certain acts may be sufficient as to third parties to charge them as partners which are not sufficient as between themselves, the problem in this type of case is different when you are dealing with a stranger.

If somebody were to sue The Griesedieck Company for something that LeVecke did, claiming that he represented them, which is the usual case, the proposition would be entirely different from one who is a part of the organization himself.

Mr. Wolfe: That is right.

The Court: And so here we have a different proposition. This is not the case of a partnership.

Mr. Wolfe: That is right.

The Court: We hold that persons who hold themselves out as partners may be held responsible for the acts of a partnership, and that is especially true in California, because, as you no doubt know, I am old enough to have practiced before 1929, and, in fact, I have been a judge since before 1929, but you know that since 1929 we have the uniform partnership law, which, of course, extends the scope of partnerships. Before that time, for instance, California never recognized a partnership as an entity. You could not sue Smith and Jones as partners, or be sued by them. You would have to sue them as John Smith and James Jones, doing business, because we did not recognize a partnership as an entity. That was changed by the law of 1929, so that as of now the partnership will be held responsible.

Recently I wrote an opinion which ought to be out in about a week in the Federal Supplements

upon a very important problem, whether a deed made by two members of a partnership, there being no others, was binding on the partnership, even though it did not say, as required by a section enacted after the partnership law was enacted, in 1931, which said that any conveyance by a corporation or by a partnership shall state it was done on behalf of the corporation or partnership, and by the particular individual,—I held in that case that so far as the bank was concerned, which loaned them \$54,000, there being only two persons in the corporation, that if that conveyance was good before, it was certainly good now, because the Legislature did not intend to restrict the rights of partners but rather extended them by the law.

So you see all those cases which you mention are cases where somebody, who did business with the corporation, sued the corporation there, and the courts were called upon to determine whether the acts and representations of the company were such that they had a right to assume that they were acting through this agency, and even then, the finding must be sufficient.

Let me interrupt for a moment, Mr. Wolfe, to call attention to a case I refer to. This is *Woodworkers Tool Works vs. Byrne*, 191 F. 2d 667. That was a case in which a person who was injured by an inherent defect in a woodworking machine brought suit. I heard the case without a jury, and gave judgment against the foreign corporation and their local agent.

The Court of Appeals sent the case back to me,



with directions to take additional testimony. They held that the evidence was not sufficient, and they sent it back to me to retry upon that issue only. Of course, we got into the usual trouble, that the lawyers said it was sent back for all purposes, but I insisted that when they said that the judgment was vacated for the purpose of taking additional testimony, I would not go back and go into the question of liability, and the Court of Appeals on the second appeal said I was right once more. That case is *Woodworkers Tool Works vs. Byrne*, 202 F.2d 530.

I will read to you the findings which the court said were sufficient to show how, when you are dealing with a third person, who claims the right to bring—let's use the expression "to bring the foreign corporation in through the acts of the agent," you are in a different position than when the agent himself sues the foreign corporation and says, "You were doing business here through me." You are in an entirely different situation, and this is the finding which I finally made on the second trial:

"That Elmer Preuer is the sole proprietor of Woodworkers Supply Company";—

Now, that was the California concern. The eastern concern was Woodworkers Tool Works—"that defendant, Woodworkers Tool Works, a corporation, was engaged in selling its products in California through the agency of said Woodworkers Supply Company; that the panel raiser head involved in this action was sold to plaintiff's employer, Selby Company, in California, by defendant through said Woodworkers Supply Company; that

defendant had a running course of business every year and sold some of its items at all times in California through said Woodworkers Supply Company on a commission basis; that defendant's business of selling its products in California through the agency of said Woodworkers Supply Company was continuous and systematic";—that takes care of those cases where it is sporadic—"that said panel raiser head as well as other products of defendant sold in California were shipped by defendant company directly to the purchasers through orders received from Woodworkers Supply Company and paid for by purchasers through said Woodworkers Supply Company";—in other words, that while they were shipped from the East, the payment was through the local agent—"that said Woodworkers Supply Company was the agent of defendant, Woodworkers Tool Works, as their identity of names implies."

Now, the opinion written by Judge Healy said:

"\* \* \* \* But the motion of appellant to quash the service of summons had been denied by the trial court, and we thought, 191 F.2d at pages 670-673, that the showing before the court at the time the motion was ruled on, going to the issue whether appellant had constituted one Preuer by law an agent in California to receive service of process on its behalf, was insufficient to warrant the denial. We noted, however, that during the course of the trial substantial oral evidence had been received tending to show the existence of the necessary agency relationship between appellant and Preuer, and we summarize this evidence, 191 F.2d at page



673; but it was further noted that the trial judge regarded the jurisdictional problem as having already been determined, hence had not taken the oral evidence into account except for such bearing as it might have on the merits.

“We were of opinion that the issue of the validity of the service, inasmuch as it was one of due process, was open to further examination and that the evidence adduced on the trial might properly be considered as supplementing the original showing on that issue. We said, 191 F.2d at page 673,”—and then they quote it. Then after that they say:

“After consideration and disposition of the remaining issues the court made the following order”: and then they repeat what they had said, and then they said that they remanded it only for that purpose. Then they held that my specific findings on the second trial were adequate.

This is, I think, one of the latest decisions of the Court of Appeals showing the way in which they apply the California cases. You will find in this opinion they cite all the Supreme Court cases relating to the relationship of a corporation to its subsidiary, and so forth, down to the International Shoe Company vs. State of Washington case, and they reached the conclusion that the evidence was insufficient to permit the court below to find that the Woodworkers had constituted the Woodworkers Supply Company their agent for process. Then, of course, when they came back I asked them if they wanted to produce additional testimony, and

they said, "No," so on the basis of that I made the finding.

So you can see how our Court of Appeals applied it. They held that the showing made by the affidavit, that they sold through them and consigned to them on a commission basis, and so forth, was not sufficient, but they held there were other facts. But they said I did not make any findings, so when it came back, I made the additional findings.

So here is one of the latest cases showing the combination of both the State and Federal law as the Ninth Circuit interprets it.

Mr. Wolfe: Yes, your Honor. We cited that in our points and authorities, *Woodworkers vs. Byrne*, and, I believe, as I recall, it is also cited in those late cases, the California cases.

The Court: That is right. But I don't know of any cases in the briefs that involve a question where the agent himself sues and tries to bring in his principal into the State. These are all cases where third parties do that.

Of course, the point I am trying to make is that, just as in partnerships, certain acts may not bind the parties as against themselves, but may be sufficient against third parties who acted on the assumption of the partnership. So on this branch of the law we have to approach it from an entirely different angle when we consider the problem of a third party, who does business through the agent as against when the agent himself tries to bring the principal into the State.

Mr. Wolfe: Yes, your Honor. With that in

mind, we made our affidavits, I think, to show how the LeVeckes here in this State had the authority to settle certain matters for The Griesedieck Company, how their stationery was sent out by The Griesedieck Company, so that the LeVeckes could use the stationery as the representative of The Griesedieck Company to settle these claims with third parties, how the third persons, for instance, the Drexels, would look to LeVecke to find out at what prices they should sell the beer, and, of course, the LeVeckes would check with the home office that The Griesedieck Company had, and all of those things came into play.

In other words, The Griesedieck Company not only had dealings directly with the LeVecke Company, but the LeVecke Company also was representing The Griesedieck Company in certain matters here in California, and we, I think, set forth in our affidavits and showed how The Griesedieck Company would send out correspondence to the LeVeckes and say, "You answer it," or when problems arose here with other people in this State with whom The Griesedieck Company was doing business directly, such as Drexel, Drexel would call the LeVeckes and say, "What are we to do with this?" Or ask the LeVeckes how to settle a certain matter, and they would, in turn, confer with The Griesedieck Company.

So you have, in addition, not just the dealings between The Griesedieck Western Brewing Company and the LeVeckes, but you have the LeVeckes acting on behalf of Griesedieck, and between many

other people here in the State of California, answering correspondence between them and The Griesedieck Company, and all of those things were taken into consideration, and they were put into the affidavits.

Now, there is no denial, as far as The Griesedieck Company is concerned, that they were out here, they tried to sell their beer here, the president of the company came out and made tours of California, periodic tours, selling tours, and he also came out here and he presented to the various people out here copies of their financial statements, and he said, "We want you to know"—in one of the letters which are attached to our affidavits, he said, "We want you to know that The Griesedieck Company are here to stay, we are not just a fly-by-night outfit, we are here on the West Coast to stay, and I am presenting you with our financial statement to show that we can live up to our obligations, and we say we are going to sell you beer here in this State, and on the coast here, and I want you to look over our financial statement, which will show we are substantial and financially responsible persons."

He made these trips out here, and made the trips out here for that specific purpose and that specific reason. So, in addition to just the fact that The Griesedieck Company was dealing with the LeVeckes here on the coast to have them sell certain of their beers, they also had the LeVeckes do many other acts as direct agents. They had the card of The Griesedieck Company.

Now, counsel point out to the court that they just



sent the cards out here without the printing on them, other than the names of the two beers, and they sent them out in blank to the LeVeckes, and that the LeVeckes took it upon themselves to print in their names as representatives of Griesedieck Western. But I might point out to the court that this practice went on for many years, for a period of four or five years, and, also, the fact that there were never any complaints theretofore made, and The Griesedieck Company said, "We have no correspondence showing that we authorized them to act as our agents," but, nevertheless, they must have authorized that, or that course of conduct would not have gone on for so many years.

They also sent out their stationery. Now, they can't deny that, and they don't deny it. In fact, I don't think they have answered the reason why they sent out their stationery. The stationery was sent out here so that the LeVeckes could use it and sign it as their agents.

So we have here all together different, and many different reasons. It is an accumulation of many different representations by the LeVeckes, and not just on the part of the LeVeckes selling beer for the company, but representing them in many other capacities, even settling the price of beer for and on behalf of The Griesedieck Company.

The Court: All right.

Mr. Wolfe: Now, we have already made our statement concerning Carling. I think our affidavits are ample, and I think I might state to the court that we have a great deal of correspondence between

the companies, and we made our affidavits so voluminous that we thought it unnecessary to bring in and file that with our affidavits.

The Court: All right. Have you seen this additional affidavit, and do you want time to answer that one, or do you want to stand upon the record?

Mr. Wolfe: Well, we would like to answer it for this reason, that the facts as stated there are not true. They state that only one or two books were sent out here, and we have a whole cabinet of these delivery books that were sent, and they were not merely sent here for the form to be followed by the LeVeckes, but they were sent here for the purpose of use, so we would like to answer that.

The Court: I think there is some merit to that. For instance, in Paragraph V they allege directory listing. That is a strong element, and I would rather have your view on that in the record before I rule on the matter.

Mr. Wolfe: All right. We would like to answer that.

The Court: Do you desire to add anything?

Mr. Cecil: I don't believe so, your Honor.

The Court: Then how much time do you want to answer that,—five days?

Mr. Wolfe: Five days will be satisfactory, your Honor.

The Court: All right. The plaintiffs are allowed five days in which to answer the affidavit filed this morning, the affidavit of Henry G. Sewing, Jr., and the matter to stand submitted at that time.

All right, gentlemen, thank you.



[Endorsed]: No. 14816. United States Court of Appeals for the Ninth Circuit. William R. LeVecke and Reed LeVecke, Appellants, vs. Griesedieck Western Brewery Co., a corporation, and Carling Brewing Co., a corporation, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: July 13, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 14816

WILLIAM LeVECKE and REED LeVECKE, do-  
ing business as The LeVecke Company,  
Appellants,

vs.

GRIESEDIECK WESTERN BREWERY CO., a  
corporation, and CARLING BREWING CO.,  
a corporation, Respondents.

#### APPELLANTS' STATEMENT OF POINTS

Appellants intend to rely on the following points in this appeal:

1. That respondents Griesedieck Western Brewery Co., a foreign corporation, and Carling Brewing

Co., a foreign corporation, neither of whom had qualified to do business in the State of California as provided by law, were, at the time of the accrual of appellants' causes of action against them, and had been, doing business in the State of California so as to make them amenable to service of process, in an action commenced against them in a Court of the State of California, through service of process on the Secretary of State of California.

2. That appellants have a cause or causes of action against respondents.

3. That the United States District Court erred in making its order granting the motion of respondents to quash the service on them of summons and complaint.

Dated this 5th day of August, 1955.

THOMAS A. WOOD,  
LARWILL & WOLFE,  
/s/ By CHARLES W. WOLFE

Affidavit of Service by Mail attached.

[Endorsed]: Filed Aug. 8, 1955. Paul P. O'Brien,  
Clerk.